EUROPEAN GOVERNMENTS AND POLITICS



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EUROPEAN GOVERNMENTS AND POLITICS

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Preface

MY aim in preparing this volume has been to bring to date, expand, and otherwise improve a book bearing the same title, published in 1934. Like its predecessor, the volume is designed for use as a text in courses on European or comparative government, and to that end it deals with five governmental systems of our time with which (in addition, of course, to the government of the United States) intelligent Americans may reasonably be expected to be familiar. To be sure, various other systems are both interesting and important. The five here selected for treatment, however, have undeniable claims because of functioning in countries of the first rank, and, even more, because of their inherent significance for students of political and social phenomena; and the rest are omitted in order that the five may be given the time and space that they deserve, within bounds feasible for either a book or a course.

Like the European world itself in these fateful days, the book is divided between governmental systems grounded on two sharply opposed principles or plans of political organization and action—parliamentary democracy and totalitarian dictatorship. England may no longer be "the greatest existing school of politics"; at all events, some of her former Continental pupils have repudiated most of what they learned from her institutions and experience. Historically, however, her rôle has been of the highest importance, and for none more than for Americans; and her scheme of government is still one of the world's priceless political assets. Twenty chapters (largely adapted from my *English Government and Politics*) are, therefore, devoted to the government of the United Kingdom, with so much mention of the far-flung Empire as is essential to an understanding of government as operated from Westminster and Whitehall. As co-partner with Britain in holding the hotly beleaguered fortress of democracy in contemporary Europe, and as a theater of political thought and action comparing and contrasting most instructively with the British, France is next brought into view; and here a number of chapters have been almost completely rewritten.

The remainder of the book is devoted to dictatorships—two fascist and one communist. In the case of Germany, my decision to

retain (in revised and condensed form) three or four chapters devoted to government under the Weimar constitution may cause surprise. No one, of course, is so naive as to suppose that if and when the Nazi régime shall give way to something different, the Weimar system will be restored *in toto*. The rise and triumph of Nazism cannot, however, be understood without full knowledge of what went before; and in any event, it ill becomes students of government to lose interest in a political order as significant as was that of 1919–33 in Germany, simply because another has arisen in its place. Those who think otherwise may, of course, ignore the chapters referred to, indeed, those who, in general, do not care for "historical background" may omit certain additional chapters designed as introductions. Sections of the book devoted to Italy and the Soviet Union have been expanded, with special attention to the emerging corporative state in the one instance and to the new régime under the U.S.S.R. constitution of 1936 in the other.

It may properly be added that the entire book was in type when Europe once more became the scene of a major war in September, 1939. Three of the countries whose governments are herein dealt with were involved from the outset; one or both of the others seemed not unlikely to be drawn in before any considerable lapse of time. It proved possible, as the pages were being closed, to make mention of a limited number of the earliest war-time developments affecting government in the belligerent countries. But such developments had not gone far, and the governments and politics which the book undertakes to portray are, of course, those with which Englishmen, Frenchmen, Germans, Italians, and Russians entered the new war period.

For assistance in drafting Chapters XXXVII–XXXIX, I am indebted to my colleague, Dr. William Ebenstein, for materials on the Italian corporative state, to Professor H. Arthur Steiner, of the University of California at Los Angeles, and for tireless and efficient stenographic service, to my secretary, Miss Phyllis Schwoegler.

FREDERIC A. OGG

MADISON, WISCONSIN
September 15, 1939.

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Part I

Parliamentary Democracies

CHAPTER I

The Panorama of English Constitutional Development

THE starting points of English political institutions and procedures lie scattered along a high road of national history stretching thirteen or fourteen hundred years into the past. With the exception of a brief interval at the middle of the seventeenth century, when a flood tide of reform swept the country into civil war and into foredoomed experiment with a republican form of government, the constitution's peaceful and orderly development has never been seriously interrupted. Other lands, *e.g.*, France, Germany, and Russia, have broken sharply with the past and set up wholly new governments—in some instances, a number of times. In all Continental Europe, there is hardly a government today that antedates 1800; few go back of 1870; half or more have come into existence since 1914. The same situation exists in other parts of the world, where perfectly definite dates can often be assigned for the creation of new systems or the remodelling of old ones. England, however, has moved along an essentially continuous constitutional pathway, readjusting her institutions slowly and cautiously to changing conditions and needs. She has travelled a long distance, and her government today is a very different affair from that of the period of William the Conqueror, or of Elizabeth, or of George III, or even of Victoria. A Pitt or a Burke—even a Bagehot or a Gladstone—wandering about the Whitehall or Westminster of Neville Chamberlain would feel himself almost a stranger. What he would encounter would, nevertheless, remind him strongly of the past; much would be essentially as it was when he first walked the earth, and indeed long before. A main characteristic of English constitutional and political

CONTINUITY THROUGH THE CENTURIES

experience has been its steady and cumulative sweep through the centuries.

THE ANGLO-SAXON PERIOD

The first scene disclosed in the panorama is the primitive Britain of the Celts, the Romans, and the Saxons. The spectator will not need to pay much attention to the warlike Celtic tribes which Caesar, at his famous crossing of the Channel in 54 B.C., found in sole possession of both the larger island and its smaller neighbor to the west. Their Welsh and Irish descendants contributed heavily to the cultural history of that section of the world, and the Irish now have a substantially independent government under the constitution of Eire (Ireland) adopted in 1937. But neither Welsh nor Irish of earlier times had much to do with making the English government what it is today. No more did the Romans. To be sure, a hundred years after Caesar, the wide-sweeping boundaries of their empire were extended to include a province newly formed out of southern and central Britain. But when mounting troubles compelled them to withdraw from the country in 407 A.D., they left behind them nothing of lasting political significance.

The case of the Saxons was far otherwise. Swarming across the North Sea after the middle of the fifth century A.D., they and their kinsmen, Angles and Danes, pushed the defenseless Celts westward, possessed themselves of most of the larger island, and became the founders of modern English civilization. Englishmen of today are by no means merely twentieth-century Saxons. Celtic, Norman, and other strains are woven deeply into the national stock, and English or British culture and institutions of our time are too often regarded as only "Anglo-Saxon." Nevertheless, the basic element in the England that we know is unquestionably Saxon; and the first period to which the growth of English political institutions can be traced is that of Saxon settlement and domination, extending from the fifth-century incursions to the Norman Conquest in 1066. The contributions of these centuries were not as extensive as was formerly supposed, because it has been shown that, contrary to the views of many English and American historians up to less than a generation ago, representative government did not originate in the German forests and come down through Saxon days into mediaeval and modern England.[1] The period, however, contributed one institution, *i.e.*, kingship, which, although never very strong in Saxon hands, became the core or kernel around which the English constitution developed

[1] See p 10 below

in later times; also, it left the country covered with a network of areas of local government—especially *burghs*, or boroughs, and shires (later counties)—which connect closely with those employed in our own day.[1]

NORMAN-ANGEVIN DEVELOPMENTS

Saxon kings showed no marked genius for state building, and in 1066 their feebly united realm was wrested from them by a conqueror from across the English Channel, *i.e.*, William of Normandy. This started a new era in the country's constitutional development.[2] Even on the smaller stage furnished by his Continental duchy, William had proved his claim to statesmanship; and in the new and larger field, his vigor, foresight, and resourcefulness achieved remarkable results. Confiscating the estates of the Saxon earls, he parcelled them out among his followers on a feudal basis so contrived that the tenant's foremost obligation was obedience to the king; without uprooting the local institutions that he found, he readjusted them so as not to interfere with strong central control; the church was brought under effective supervision; and altogether the situation was so maneuvered as to make the king master of the land in a measure never attained by any Saxon monarch. For half a century after the Conqueror's death (1087), the new order was maintained, even though the kings were of inferior caliber; and though a period of confusion under the unfortunate Stephen (1135–54) threatened to wreck the mechanism, the energetic and astute Henry II (1154–89) retrieved all that had been lost and gained new ground besides. In the course of a reign which covered a full generation, the adroit Angevin curbed rebellious nobles and churchmen, turned locally elected sheriffs into royally appointed agents of the central government charged with enforcing law and collecting taxes in the shires (thenceforth known as "counties"), developed a staff of royal judges who went up and down the country deciding cases according to principles that gradually hardened into the historic "common law," and in other ways toned up and consolidated the new political system created by his great-grandfather.

GREAT COUNCIL AND "CURIA REGIS"

No king, however able and industrious, could manage so vast a piece of machinery single-handed. To aid in running the government and

[1] Descriptions of Anglo-Saxon institutions will be found in G. B. Adams, *Constitutional History of England* (rev. ed., New York, 1934), 5–49, and A. B. White, *The Making of the English Constitution* (rev. ed., New York, 1925), 3–71.

[2] Some writers, *e.g.*, G. B. Adams (*The Origin of the English Constitution*, 16), consider that the constitution really originated in the Norman-Angevin period

to help the monarch formulate his policies, two main agencies arose. One was the *Magnum Concilium*, or Great Council, the other was the *Curia Regis*, literally, the King's Court. The Council was a gathering of principal men of the kingdom—bishops, officers of the royal household, tenants-in-chief, and others—meeting three or four times a year at the call of the king, and looked to by him to help decide policies of state, to review the work of administration, to sit as a high court of justice, and to bear a share in making and amending laws on the rather rare occasions when such action was needed. Originally, the *Curia Regis* was not strictly a separate body, though in time it in effect became such. The Council, as has been observed, did not meet often, moreover, it usually sat only a few days at a time. But there was business to be attended to pretty much all the while, and the very natural plan was hit upon of associating together for the purpose those members of the Council who as officers of the royal household—chamberlain, chancellor, constable, etc.,—were already following the king wherever he went and giving their time continuously to the business of state. This smaller, more or less professionalized, group—a sort of inner circle of the Council—constituted the Curia. No hard and fast rules governed the composition of either body. Still less was there any definite separation of jurisdictions. The king could refer matters to the large council or the "little council," or to neither, precisely as he chose, and he was in no wise bound to be governed by the advice received. The fact is significant, however, that through all the ups and downs of the Norman-Angevin period, strong and weak monarchs alike followed the practice of calling together the leading men of the realm, and of relying upon them not only for assistance in lawmaking and administration, but for information, opinions, and support.

FUNCTIONAL DIFFERENTIATION

One will not be surprised to learn that with the lapse of time Council and Curia grew farther apart, and that each made its own great contribution to the country's governmental system of later centuries. Take first the Curia. In the days of the Conqueror, that body is seen performing work of many different kinds, with apparently no thought of functional specialization. But this situation could not last. As the volume of business mounted, trained lawyers, expert financiers, and other men of special aptitudes were drawn in, and before long—even in the reign of Henry II—we see evidences of a tendency to split up the Curia's multifarious duties into segments and to develop a distinct branch or section to take charge of each. Nobody planned the

thing out, as a modern efficiency and economy commission might do it. But by slow and hazardous stages, judicial work was separated from the tasks of general administration; and while one portion of the Curia (known as the "permanent council," and later as the "privy council") went on as a council for general purposes, another became the parent of four great judicial organs, namely, the courts of (1) exchequer, (2) king's bench, (3) common pleas, and (4) chancery. Meanwhile, the superior aptitude of this expanding mechanism for handling administrative and judicial business left the Great Council with less and less to do in that domain. The Council did not, indeed, die out, or even lose its importance. Its development was merely turned in a different direction; and, recalling the nature of its membership, one will hardly be unprepared to find it functioning later in the guise of the upper branch of Parliament, *i.e.*, the House of Lords.

THE GREAT CHARTER

The masterful manner in which Henry II handled affairs, combined with the essential justice of his rule, won for him a very strong position; and if his successors had been men of like capacity, there might be a different story of English constitutional development to tell. Autocratic power, however, in the hands of weak or otherwise unworthy kings—notably Henry's sons, Richard I and John—provoked rebellion; and after John, by a series of high-handed acts and humiliating surrenders, alienated most of his supporters, the strong men of the country took advantage of his predicament to place in his hands a lengthy list of demands for reform, with the alternative of civil war if he refused them. Evasion proved possible for a brief time only; and on June 15, 1215, in the plain of Runnymede, between London and Windsor, *Magna Carta*, the "Great Charter," was agreed to on both sides. The document was not literally "signed"; John could not write his name, and few if any of his opponents were more proficient. But the same purpose was served by affixing the great seal of the realm and the individual seals of the 25 barons who were delegated to see that the king's promises were carried out.

Bishop Stubbs once said of the Charter that the whole of English constitutional history is merely one long commentary upon it, and writers and orators often refer to it as the most important political document in all English history, if not in the history of the world. To be sure, a good deal has been read into the instrument in later times that was not really there; it did not, for example, guarantee trial by jury, nor did it provide for anything in the nature of representative government. Wrested from the king, not by the "people" in any

proper sense, but only by a group of disgruntled barons, it had little to say—at all events directly—about the rights and privileges of humbler folk. And, being intended primarily as an enumeration of rules and principles presumed to be already in operation, it contained little that was new. Nevertheless, its importance, if construed understandingly, can hardly be exaggerated. England was at a point where somebody had to decide whether she was to be a nation ruled according to law or only according to royal caprice—whether if the king proved unwilling to be guided by established principles, he could be compelled to do so or to give way to another of more tractable temper. The barons who pressed John to a surrender at Runnymede cast the die on these momentous matters. They were, of course, not thinking of modern forms of constitutional limitations; and anything resembling modern democracy was quite beyond their ken. But by getting the sovereign's solemn agreement to do certain things and not to do others, and by setting over him a sort of baronial guard to see that he lived up to his engagements, they turned the country's steps once more away from absolutism and in the direction of constitutional government. Better means of holding the king in check were later found than a mere committee of 25 nobles; but for the time being the principle was more important than the machinery.

One will not be surprised to learn that as time went on the rights and liberties guaranteed to barons, clergy, and merchants were, in so far as pertinent, gradually extended to other classes of people, or that the Charter became a sort of touchstone and palladium of the nation's liberties to which Englishmen habitually harked back whenever they considered that the king was breaking over the bounds that agreement or custom had established for him. More than one monarch in later times found it good policy to issue specific "confirmations" of the historic contract, Parliament likewise "confirmed" it on sundry occasions, and such portions of the instrument as have any modern bearing—relatively few though they are—belong to the accepted law of the British constitution today.[1]

Meanwhile a line of development was started which in the end not only gave the nation more effectual means of keeping kings under control, but supplied it with an instrumentality through which to

[1] See p 25 below An English translation of the Charter will be found in G. B. Adams and H M Stephens, *Select Documents of English Constitutional History* (New York, 1906), 42–52. The principal work on the subject is W S McKechnie, *Magna Carta* (Glasgow, 1905) For fuller treatment of the Norman-Angevin period, see G B Adams, *Constitutional History* (rev ed), 50–143, A. B White, *op cit*, 72–452

govern itself. Hard pressed by both foreign and domestic difficulties, King John, in 1213, called upon every county to send to a meeting of the Great Council four "discreet knights" who should act for the landholding and other substantial elements in assenting to a royal levy upon their possessions. The expedient did not save the situation for John, but it had obvious utility, and later monarchs did not hesitate to avail themselves of it. When such a meeting was convoked by Henry III in 1254, king and barons fell to quarrelling, and eventually to fighting, with the result that in 1264 the barons were victorious at Lewes and their leader, the foreign-born Simon de Montfort, emerged as regent of the country. No less in need of funds than the king himself, Montfort thereupon convened a "parliament"[1] in 1265 which was attended not only by the barons, clergy, and two knights from each shire, but also by two burgesses from each of 21 boroughs, or towns, known to be friendly to the barons' cause. The gathering was only a partisan conclave, and to speak of its sponsor as the Father of the House of Commons is to give him rather more than his due. The inclusion of spokesmen from even a limited number of "hand-picked" towns was, however, a highly significant departure. Various other parliaments were held in the next 30 years, usually with no townsmen in attendance. But a meeting convoked by Edward I in 1295 brought together all elements considered capable of giving help, and proved so similar to the broadly national gatherings of later centuries that it has ever since held a place in history as the "Model Parliament." Two archbishops, 18 bishops, 66 abbots, 3 heads of religious orders, 9 earls, 41 barons, 61 knights of the shire, and 172 citizens and burgesses from the cities and boroughs—upwards of 400 persons in all—were present.

THE RISE OF PARLIAMENT:

1. THE FIRST "PARLIAMENTS"

Thereafter "Parliament" rapidly became a regular feature of the governmental system. It was, of course, at no time definitely "established"; it merely grew up—by nobody's planning in advance—because the kings found occasional meetings of the kind useful for their purposes. Certainly the plan of calling in representatives of the counties and boroughs to participate in the public business along with the councillors flowed from no popular movement or demand. On the contrary, knights and burgesses took their places along with the magnates grudgingly, under the impact of royal command, know-

[1] The term (from the French *parler*, "to speak") was for some time thenceforth applied indiscriminately to meetings of the Council whether or not attended by knights and burgesses.

ing full well that all that was expected of them was that they obediently saddle themselves and their fellows with new tax burdens. The day came when representation in Parliament was looked upon as a privilege, a benefit, and a source of power. But nobody so regarded it in the times of which we are speaking.

2. THE REPRESENTATIVE PRINCIPLE

From the first, the knights and burgesses who attended the meetings were, in one way or another, "elected"; and to some extent this gave Parliament, even in its earliest days, the character of a representative body. The idea of representation was not peculiar to England; nor did it first appear in that country in connection with Parliament. The old notion, however, that the elements of representative government came out of the forests of Germany, found lodgment and growth in Anglo-Saxon England, and carried over into the parliamentary institutions of the thirteenth and fourteenth centuries, has been exploded, and it is now understood that, whatever momentary importance may be attached to such earlier practices as the occasional appearance of deputies or delegates in the *motes* of Anglo-Saxon hundreds and shires, the system of representation in Parliament was of mediaeval origin, and is to be accounted for principally, if not entirely, by the desire of needy kings for revenue.[1] Representative government, in any full and proper sense, existed neither in England nor anywhere else until well down in modern times. The foundation for it was, however, laid in England by the joining of elected county and borough members to the magnates of the Council. And this arose from no mysterious "Teutonic genius" for representative institutions, no inherent and irrepressible love of liberty and self-government, but solely because, at a relatively early date, the kings of England were strong enough to reach down to increasingly numerous and prosperous classes of the people and draw them into the orbit of royal taxation.

3. DEVELOPMENT OF THE BICAMERAL SYSTEM

In 1295, and for some time thereafter, the three orders, or estates—barons, clergy, and commons—met first as a single body to hear the king's requests and afterwards sat separately to deliberate

[1] The evidence is presented in C A Beard, "The Teutonic Origins of Representative Government," *Amer. Polit. Sci Rev.*, Feb, 1932. Cf. C. Stephenson, "The Beginnings of Representative Government in England," in C Read (ed), *The Constitution Reconsidered* (New York, 1938), 25–36, and especially H. J. Ford, *Representative Government* (New York, 1924), Chaps. i–ix. Useful critical comment will be found in E. M. Sait, *Political Institutions; A Preface* (New York, 1938), Chap. xx.

upon them; and for a time it appeared not unlikely that Parliament would permanently take the form of a tricameral, or three-house, assemblage. Had this occurred, the barons and clergy would always have been able to outvote the commons, and England would have run into the same difficulties that a three-house Estates General produced in France. Happily, however, practical interests led to a different arrangement. On the one hand, the greater barons and more important clergy were drawn by community of interests into a single body. On the other, the lesser barons gravitated into an affiliation with the county freeholders and the burgesses, and the minor clergy, finding their more appropriate place in the convocations (ecclesiastical assemblages) of Canterbury and York, dropped out altogether. The upshot was two houses, and only two—one, the House of Lords, virtually perpetuating the Great Council, and consisting of persons who attended in response to individual summons, and the other, the House of Commons, bringing together all members who, elected in counties and boroughs, attended in a representative capacity. There was no crystallized opinion that two houses were better than some other number, nor indeed any plan or intent in the matter at all. But within less than a hundred years after the Model Parliament the bicameral system was an accepted fact. Profoundly influencing the course of English history from the fourteenth century onwards, the system eventually spread to all parts of the world; and although nowadays regarded a good deal less favorably than it once was, it still prevails, in one guise or another, in the great majority of countries.

4. THE GROWTH OF POWERS:

A. FINANCE

Parliament today is a decidedly powerful body; legally, indeed, it is omnipotent. But in the beginning it was far otherwise. When it met, the king, personally or through his chancellor, indicated what he wanted, and the estates—usually without discussion—assented. Later, the houses made formal reply through designated spokesmen, yet rarely showed hesitation or objection. Gradually, however, the potentialities of the situation dawned on the various groups of members, not excluding the commoners. The king *needed* parliamentary grants and support; otherwise, Parliament would not have been brought into existence in the first place. And by slow stages the fact was capitalized by all of the elements participating. As might be expected, the first major advance was in the domain of finance. "No taxation without representation" did not at once become an accepted principle. But hardly had Parliament taken on its bicameral form before the for-

mula appeared which in substance is used to this day in voting supplies to the crown, *i.e.*, "by the Commons with the advice and assent of the Lords Spiritual and Temporal"; and in 1407 Henry IV definitely pledged that thenceforth all money grants should be considered and approved by the Commons before being taken up by the Lords at all. Thus did that mighty lever, the power of the purse, pass into the hands of the people's representatives; and thus was the so-called "lower" branch of all later legislatures put in the way of achieving its cherished primacy in finance.

B. LEGISLATION

Likewise with legislation. Originally, Parliament was not a law-making body at all; such laws as were made still emanated from the king, with the assent of his councillors only. But, starting with a mere right of individual commoners to present petitions, the Commons as a body gained, first the right to submit collective "addresses to the throne," and later the right to take part in giving their requests the form of law. The costs of government and war compelled the king to turn with increasing frequency to Parliament for supplies; before supplies were forthcoming, he was apt to be called upon through petitions for a redress of stipulated grievances; and this usually eventuated in some kind of legislation, with the result that not only the taxing power, but law-making power as well, gradually passed into parliamentary hands.[1]

GOVERNMENT UNDER THE TUDORS

Next we encounter a stretch of two hundred years of English history during which the nation found its leading constitutional problem in the rivalry of king and Parliament for supreme control. Under a line of Tudor monarchs covering the period from 1485 to 1603, the advantage lay decidedly with the sovereign. The country had lately emerged from the dreary Wars of the Roses, and wanted peace. It knew that peace, and with it prosperity, could be had only through strong royal rule. And Henry VII, Henry VIII, and Elizabeth were statesmanlike enough to supply such rule while yet in the main disguising the fact that they were in reality autocrats. For Parliament, they found very real uses, though only, of course, to the extent that it could be made to do their bidding. When some great plan, like the separation from Rome under Henry VIII, was to be carried out, a parliament was called and the desired action embodied in a statute,

[1] The rise of Parliament is described more fully in G. B Adams, *Constitutional History* (rev. ed.), 169–215, and A B White, *op cit*, 337–452 The best general history is A. F. Pollard, *The Evolution of Parliament* (London, 1920)

which gave it the appearance of flowing from the will of the nation, and not simply that of the king. The list of boroughs invited to send representatives was from time to time juggled in the royal interest; elections were systematically manipulated by royal agents; members of independent mind were threatened, bullied, and otherwise coerced into the compliance expected of them. Until the Tudor period was far advanced, however, the alternative to paternalistic royal rule still seemed to be, not parliamentary government, but baronial anarchy; and the people had no mind to live through that sort of thing again.

THE SEVENTEENTH-CENTURY REVOLUTION

Then followed—beginning with James I in 1603—the line of Stuart kings, as sadly deficient in tact as the Tudors had been conspicuous for it; and with them came deadlock, civil war, and in the end a fresh start on the road toward popular self-government. James I, rejecting the dictum of the great contemporary jurist Coke that the "power and jurisdiction of Parliament" was "so transcendant and absolute" that it could not be "confined within any bounds," and openly adhering to the doctrine of divine right, quarrelled with every parliament that he convened; and in particular gave offense by insisting upon "impositions," *i.e.*, additional customs duties, decreed by his own independent authority.[1] His successor, Charles I, after an initial period of trouble, got on for eleven years without any parliament at all. But in 1640 his Scottish wars drove him to resort to the houses for funds; and the way was opened for controversies which in two short years plunged the country into armed conflict. At the outset, the parliamentary party had no intention of setting up a government by Parliament alone, in form or in fact; its only object was to compel the king to keep his promises and govern according to law. Military successes and progressive shifts of circumstance and opinion carried the victors along, however, on a tide of political experimentation such as the nation had never known and has not witnessed since. Defeated on the field of battle, Charles was executed in 1649; kingship and the House of Lords were abolished; the country was proclaimed a republic; a "commonwealth" government was set up; and in 1653 the first written constitution known to the modern world was put into operation.[2] For several years, Cromwell and the discor-

[1] F. D. Wormuth, *The Royal Prerogative, 1603–1649; A Study in English Political and Constitutional Ideas* (Ithaca, N. Y., 1939).

[2] The "Instrument of Government," replaced in 1657 by another document known as the "Humble Petition and Advice." For text of the former, see G. B. Adams and H. M. Stephens, *Select Documents*, 407–416. The above statement as to priority should perhaps be qualified by the observation that an "Agreement of the

dant forces of army and Parliament labored to keep the refurbished ship of state from foundering. But like revolutionists everywhere, they found it easier to destroy than to build; and in the end they were obliged to give up. Shrewder men, including Cromwell himself, had recognized from the start that matters had been carried too far, and after the hand of the Great Protector was removed from the helm by death in 1658, a return to former arrangements was only a question of time. In 1660, the Stuart claimant, having given the guarantees demanded, returned from Continental exile and was received with general acclaim as Charles II.

THE LAST OF THE STUARTS

The Stuarts were to have another chance; and the reigns of Charles II (1660–85) and his brother, James II (1685–88), were essentially a time of experiment, the object being to find out, once for all, whether a member of that imperious line could, or would, keep within the bounds fixed by the vindicated national constitution. That Charles contrived for the most part to do so was due not alone to his somewhat indolent disposition, but to a political insight which enabled him to perceive how far it was safe to go and what the consequences of transgression would be. James was of a different mold—headstrong and intolerant—and hardly was he on the throne before he grievously offended Parliament by seeking to set aside, or at least to suspend, laws that it had made, especially such as imposed disabilities upon Catholics. Foreseeing no likelihood that the monarch would mend his ways, a group of leading members took it upon themselves to invite the Stadtholder of Holland, William, Prince of Orange, husband of Mary, James' eldest daughter, to cross over to England and aid in upholding the constitutional liberties of the realm. The result was the "bloodless revolution" of 1688—bloodless because James found himself practically without support and fled the country. Early in the following year, a "convention parliament" [1] declared the last Stuart to have abdicated and established William and Mary on the throne as joint sovereigns.

THE BILL OF RIGHTS

With a view to consolidating the results of the Revolution and making evasion more difficult in the future, Parliament in 1689 drew up and adopted, in the form of a

People," drawn up by members of the army in 1647, partook strongly of the nature of a constitution, but was never in operation, also by mention of the fact that a series of eleven "orders" adopted by the Connecticut towns of Hartford, Wethersfield, and Windsor in 1639 had every essential characteristic of a constitution.

[1] So-called because not summoned in the regular way by a king.

statute, one of the most significant documents in English constitutional history, *i.e.*, the Bill of Rights. Going straight to the heart of the situation, the new instrument enumerated the unlawful practices of the later Stuarts—somewhat after the staccato manner in which the American Declaration of Independence listed the colonists' charges against George III—and forbade repetition of them as unequivocally as the English language could be made to do it. It branded as "illegal and pernicious" the "pretended" royal power of suspending or dispensing with laws, the levying of imposts without Parliament's assent, the arbitrary erection of royal commissions and courts, and the raising or keeping of a standing army in time of peace unless Parliament agreed. It affirmed the right of subjects to petition the king, the right of Protestant subjects to bear arms for their own defense, the right of members of Parliament to enjoy full liberty of speech and debate. It said that the election of members of Parliament ought to be "free," and that parliaments "ought to be held frequently." It did not, indeed, undertake to define the fundamental bases of the constitution; it seemed to take for granted that these were sufficiently understood. But it called attention sharply to the principles that had been violated, and forbade future infractions in terse clauses which could be invoked today if occasion should arise.[1]

What the Bill of Rights therefore did was to sum up, very concretely, the results of the Revolution and of the entire seventeenth-century liberal movement, and to put them in legal form so unmistakable that they could never again be misunderstood or challenged. The document, and the political overturn that lay behind it, marks the culmination of all the constitutional development that had gone before. Much has been added since; certainly English government is a very different affair today from what it was under William and Mary. But in a very true sense all that has come after has been merely by way of elaboration of the fundamentals sonorously restated in 1689. The sovereignty of the body politic, the supremacy of law, the legal omnipotence of Parliament—no one of these basic principles was ever again called in question by any persons or elements of sufficient strength to threaten the work that had been accomplished. Kingship went on, regarded, indeed, as a natural and useful institution. But thenceforth the royal tenure was not by inherent or absolute right; on the contrary, it was conditioned upon the consent of the

[1] Closely related was the Toleration Act of 1689, which provided "some ease to scrupulous consciences in the exercise of religion," *i.e.*, a larger measure of liberty for Protestant Nonconformists. G. B. Adams and H. M. Stephens, *op. cit.*, 459–462.

nation as expressed through Parliament. For all practical purposes, divine right was dead.[1]

CONSTITUTIONAL DEVELOPMENT SINCE 1689:

Even though the events of 1688–89 put the stamp of finality on certain great principles of the constitution, many of the most notable features of the English governmental system as we behold it today have arisen within the two hundred and fifty years since that date—a period longer by a century than the entire history of the United States under the constitution of 1789. There is no need to dwell upon these later developments here, for all of them will come before us as our study of present-day machinery, functions, and processes proceeds. Bare mention of a number will, however, help to establish the fact, often overlooked, that constitutional growth, even though on different lines, has been just as important in later days as in earlier ones.

1. DIMINISHED POWERS OF THE MONARCH

Notwithstanding the restrictions by which he was hedged about, the king was still, in 1689, near the center of the picture. Parliamentary supremacy had indeed been established as a principle; but there were as yet no adequate means for making it effective in the day-to-day business of government. King and Parliament were left confronting each other, as of old, without the intermediation of any buffer or screen such as nowadays—in the form of ministerial responsibility—shields them from all possibility of conflict. The eighteenth century, however, saw this trouble-breeding situation almost entirely cleared up. William and Mary, and afterwards Anne, wielded powerful control over public acts and policies. But the early Georges, ascending the throne as foreigners and caring little for Eng-

[1] The constitutional history of the Tudor and Stuart periods is related at considerable length in G. B. Adams, *Constitutional History* (rev. ed.), 249–361, and the political theories of the time are set forth clearly in T. I. Cook, *History of Political Philosophy from Plato to Burke* (New York, 1936), Chaps. XVII–XIX. Important works of a more special nature include J. N. Figgis, *The Theory of the Divine Right of Kings* (Cambridge, 1896), G. P. Gooch, *History of English Democratic Ideas in the Seventeenth Century* (rev. ed., Cambridge, 1927), T. C. Pease, *The Leveller Movement* (Washington, 1916), and C. H. Firth, *Oliver Cromwell* (New York, 1904). The text of the Bill of Rights is printed in G. B. Adams and H. M. Stephens, *op. cit.*, 462–469. The principles on which the parliamentary cause throughout the seventeenth century was based, and on which the Revolution of 1688–89 proceeded, were ably expounded and defended by John Locke in his famous *Two Treatises of Government*, published at London in 1690 (convenient edition by W. S. Carpenter, in Everyman's Library, London and New York, 1924). For general constitutional history since 1485, see, in addition to G. B. Adams, as cited, D. L. Keir, *The Constitutional History of Modern Britain, 1485–1937* (London, 1938).

lish affairs, permitted the prerogatives which their predecessors had guarded jealously—at all events, the actual exercise of them—to slip rapidly into hands eager to receive them, *i.e.*, those of the ministers and the houses of Parliament. George III (1760–1820), better acquainted with the country and glorying in the name of Englishman, tried hard, and with some success, to regain what had been lost. But his successors fell back into the easier position of a king reigning but not ruling; and although the virtuous Victoria (1837–1901) had her own ideas about the rights of a monarch even under a cabinet system of government, her long reign left no room for doubt as to what the position of the sovereign in England was thenceforth to be. A satisfactory way of running the government with a minimum of personal participation by the monarch had been worked out, and no king or queen could have induced or compelled the nation to give it up. Any effort in that direction would probably have meant the end of monarchy itself.

2. RISE OF THE CABINET SYSTEM

As the king receded into the background, the center of the stage was taken by the ministers—in particular, those of them who, as a group, came to be known as the cabinet. The cabinet came into being slowly, and the *cabinet system*, with all that it at present involves, still more so; and until within our own day both rested entirely upon usage and not upon law.[1] Finding it difficult to procure the kind of assistance that he needed from an overgrown and unwieldy privy council,[2] Charles II, in 1667, drew about himself for advisory purposes a little group of trusted members who, from the initial letters of their names, soon gained the collective sobriquet of the "cabal." [3] Less favored councillors not admitted to the charmed circle naturally objected; leaders of liberal thought attacked it as an instrumentality of intrigue; and for a time the plan had to be given up. Presently revived, however, the device established good precedent for close working relations between the king and a small select group of competent advisers; and it remained only for the group to be made to embrace all of the principal ministers to transform it into what we know today as the cabinet.

This step may be associated with the years of William and Mary (1689–1701). Not only did the chief ministers then emerge as a body meeting with and advising the sovereign, with the privy council

[1] See p. 77 below.

[2] The lineage of this body was traceable back through a so-called "permanent council" to the *Curia Regis* of Norman-Angevin times. See p. 6 above.

[3] Clifford, Ashley, Buckingham, Arlington, and Lauderdale.

pushed far into the background, but experience showed that for the sake of harmony and efficiency it was necessary that the ministers at any given time be selected entirely from the political party commanding a majority in the House of Commons. To be sure, no one quite understood what was going on; and Parliament even sought to interpose obstacles which, if it had not quickly reconsidered its position, would have strangled the cabinet system in its infancy.[1] The need for some mechanism, however, through which the houses could vindicate their newly-won supremacy and effectively control the acts of the crown found its only possible fulfillment in an arrangement under which ministers, themselves sitting in Parliament, were not only charged with the performance of those acts but held directly responsible for them; which is but another way of saying that the cabinet system was the logical and necessary fulfillment of the great constitutional settlement of the seventeenth century. Time was required to ripen the plan. But when, in 1742, Robert Walpole —the first Englishman who can properly be called prime minister— promptly and as a matter of course tendered his resignation solely because of defeat suffered in the House of Commons, the central principle of the system might have been regarded as definitely established.[2]

3. DEMOCRATIZATION OF THE HOUSE OF COMMONS

The king's personal power would hardly have fallen off so markedly, and the cabinet system as we know it would certainly never have arisen, had not Parliament also undergone some very important changes. Chief among these were: (1) the conversion of the House of Commons into a body with deep popular rootage, and therefore with more valid claim to speak for the nation as a whole, and (2) the gradual shift, from House of Lords to House of Commons, of the center of gravity of legislative and other power. As late as the opening of the nineteenth century, the House of Commons was hardly less aristocratic in temper, and hardly more representative of the nation in any proper sense, than was the House of Lords; and until 1832 it was, on the whole, growing less representative rather than more so. Rising discontent, however, gradually brought the country to a new line of policy, and, beginning at the date men-

[1] See provision (soon repealed) of the Act Settlement of 1701.

[2] On the rise of the cabinet, see, in addition to the general histories, G. B. Adams, *Constitutional History* (rev. ed.), Chaps. xv–xvi, M T. Blauvelt, *Development of Cabinet. Government in England* (New York, 1902), Chaps 1–viii, E. R Turner, "The Development of the Cabinet, 1688–1760," *Amer Hist. Rev*, July and Oct., 1913, and "The Cabinet in the Eighteenth Century," *Eng. Hist Rev*, Apr., 1917. How the cabinet grew in power until, in our day, its position has come to be complained of by some as autocratic, will be brought out in later chapters.

tioned, a long series of hard-won statutes extended the suffrage to successive groups of people who had been politically powerless, reapportioned parliamentary seats so as to distribute political influence among the voters with greater fairness, and regulated the conditions under which campaigns were to be carried on, elections held, and other operations of popular government performed. Culminating in the epochal Representation of the People Act of 1918, enfranchising upwards of twelve million men and women, and a supplementary "equal franchise" law of 1928 adding five million more, these measures brought the House of Commons to a point where it can easily be numbered among the most democratic parliamentary bodies in the world.[1]

4. CURTAILMENT OF THE POWERS OF THE HOUSE OF LORDS

For some time after the Revolution of 1688, the House of Lords not only had more prestige but was considerably more powerful than the House of Commons. The future, however, lay with the latter body. Aided by its primacy in financial legislation, the elective branch made long strides in the eighteenth and nineteenth centuries, while the other house, undergoing no popularizing changes calculated to keep it abreast of the rest of the government, fell into a decidedly minor rôle. As long as the upper chamber meekly accepted its fate, passing finance measures unfailingly as they came to it from the House of Commons and rarely blocking general legislation of major importance, neither its legal parity of power nor its anachronistic membership caused any great amount of trouble. When, however, in the early years of the present century, it began to show a more vigorous and independent attitude, even going so far as to refuse in 1909 to pass the annual revenue bill, a critical situation was produced, whose outcome was the Parliament Act of 1911, sharply curtailing the Lords' powers and bringing to an end the historic parity of the houses.[2] With nine-tenths of its members still sitting by hereditary right, and with only a handful taking part in its proceedings with any regularity, the House of Lords has become—like upper houses in those Continental countries in which they survive—not only a second, but also a secondary, chamber. The Labor party would like to see it abolished altogether.

5. THE GROWTH OF POLITICAL PARTIES

As the country in which representative government first arose, England naturally was the first to have political parties—just as it is doubtless the country today in which party counts for more in the actual working

[1] See pp. 154–157 below.

[2] See pp. 189–190 below.

of the political system than in any other.[1] Even in England, however, genuine political parties hardly existed before the early eighteenth century. Cavaliers and Roundheads of Cromwellian days, Court and Country under Charles II, Petitioners and Abhorrers who divided on the exclusion of the last Stuart from the throne—these were only factions, mutually regarding each other as enemies of the state and bent upon crushing each other out of existence. Speaking accurately, parties exist only when the people are divided into two or more groups or followings, each with its leaders, principles, and programs, but each prepared to concede that the others are quite as much entitled to exist as is itself and equally capable of being entrusted with running the government without bringing down the whole political structure in ruins. Whigs and Tories of later Stuart years started as hardly more than factions. Developing clear-cut principles and unified leadership, they, however, gradually adopted the mutually tolerant attitude characteristic of orderly parties in a peaceful society, and one will make no mistake by regarding them as the earliest of English parties. During the eighteenth and nineteenth centuries, the party system ripened simultaneously with the cabinet system; and a very close relation existed between the two developments. It was not merely because most of the great issues of the formative period, *e.g.*, king *vs.* Parliament, were of a nature to divide men into two, and only two, camps, but also because growing cabinet government inevitably tended to align all political elements with the "ins" or the "outs," that England became so definitely a bi-party country. Of late, bi-partyism has been in eclipse. Signs multiply, however, that it is again emerging, and in any event, party groupings, processes, and procedures will continue to be among the influences most profoundly affecting the theory and practice of the English political system.

6. OTHER DEVELOPMENTS

Many other great changes have taken place since the last Stuart "withdrew himself out of the country" and William and Mary were placed upon the throne. Scotland was drawn into a parliamentary union with England and Wales in 1707. Ireland was similarly linked up in 1801, although the creation of the Free State in 1921–22 left only six northern counties with a connection in any wise resembling that of

[1] Save, of course, Italy, Germany, and Russia, where, under existing dictatorships, only one party is permitted to exist, with machinery that is inextricably interlocked with that of the government

[2] Cf Chaps xvi–xviii below On the rise of political parties, see especially W. C Abbott, "The Origin of English Political Parties," *Amer. Hist Rev*, July, 1919.

previous days. A colonial empire, already started in America and India by 1689, developed into a far-flung mechanism which has necessitated numerous additions to the English political structure, though without swaying it from its accustomed foundations. Local government was reorganized and democratized between 1835 and 1929. The judicial system was overhauled during the seventies of the last century. The civil service was profoundly transformed in spirit and method after 1870. Above all, the functions and activities of government have multiplied unceasingly, entailing the creation of all manner of new machinery—executive departments, councils, boards, committees, and what not—and leading not only to new and staggering costs, but to problems of policy and procedure which test the ablest statesmanship of our time. We are accustomed to think of the English constitution as substantially achieved by the end of the seventeenth century. Future generations may reckon as one of its great formative periods the very days in which we ourselves are living.

CHAPTER II

The Constitution and the Government Today

FROM the political and legal experience of many hundreds of years has flowed the rich array of rules, principles, and usages forming what is known as the English—or more accurately today, the British—constitution; and our next concern as students of the most widely influential of modern governments must be to see what kind of a groundwork it is that has thus been laid. The term "constitution," one notes at the outset, is not always used in the same sense, even in strictly political connections. Sometimes it is given a narrow meaning and denotes merely a written fundamental law which outlines the structure of a governmental system, defines the powers of legislatures and officers and courts, enumerates and guarantees civil rights, and lays down more or less extensive and detailed principles and procedures to be observed in managing the affairs of state. Such a document may have been drawn up by a specially elected convention and approved by popular vote, it may have been put in shape by, or under the auspices of, a legislature; or it may have been prepared and promulgated by a ruling prince or dictator. Quite as often, however, in these later and more discerning days, one finds the word used more broadly to include, not merely such a documentary instrument of government, but also the entire equipment of laws, principles, usages, and precedents—many of them not committed to writing at all—which give form and character to a governmental system as a going concern. One use of the term is quite as justifiable as the other; but it goes without saying that a speaker or writer, when employing the word, ought always to leave no doubt as to which of the two meanings he intends to be attached to it.

MEANINGS OF THE TERM "CONSTITUTION"

Questioned as to what is the constitution of the United States, the average person would be very likely to point to the frame of government drawn up at Philadelphia in 1787, put into operation in 1789, modified and expanded by twenty-one amendments, and

NATURE OF THE CONSTITUTION OF THE UNITED STATES

printed as an appendix in almost every text-book on American government. And he would be right. There *is* a documentary constitution of the United States, even if it can no longer be read in quite the twenty minutes that Lord Bryce once allotted to it. But nothing would be wider of the mark than to suppose that one could get an adequate understanding of the American system of government merely by pondering an array of numbered articles, sections, and clauses printed in a book. From such a study he would never learn that presidential electors are pledged in advance to vote for certain candidates and no others, that to all intents and purposes the Senate can and does originate revenue bills, that there is such a thing as a congressional caucus or a political party or a national bank—or scores of other things of major importance about our actual working governmental system. The truth is that our written constitution—*any* written constitution that has been in operation even a few years—has come to be overlaid with, or enveloped by, a mass of rules, principles, understandings, and usages, not set forth at all in the basic text, yet contributing in many instances quite as much to making the government what it is as anything within the four corners of the formal document. Some of these auxiliary features arise from interpretation, supported by judicial opinion. Many rest upon statute. Still others flow only from precedent or custom. But the result is that the constitution of the United States comes to be, in a very true sense, the whole body of rules and practices by which the structure and powers of government, the interrelations of parts, and the ways of doing things are determined, irrespective of whether these rules and procedures are written or unwritten, and therefore of whether or not they are to be found in the "constitution" printed in the books.

NATURE OF THE ENGLISH CONSTITUTION

What would an Englishman say if asked to produce the constitution of *his* country? That would probably depend on the degree of politeness with which he sought to conceal his amusement at the naïveté of the request. He could, of course, bring forward some documents—many of them, in fact—which embody fundamental laws unquestionably forming parts of the national constitution. We have already mentioned certain ones, *e.g.*, the Bill of Rights and the Act of Settlement. But he would hasten to explain that no one of these, nor all of them together, should for a moment be thought of as composing *the constitution*—that they are only pieces or parts of it, merely scattered stones in the mosaic. At no time (since Cromwellian days, at all events), he might go on to point out, has any attempt been made to correlate and consolidate the

country's fundamental, *i.e.*, constitutional, laws in a single document. More than that, a very great part of the principles and usages according to which the government is carried on today have never been reduced to writing at all—certainly have never been formally adopted or enacted. There *is* a British constitution—the oldest and most influential of all constitutions of our time. But it exists only in the second, or broader, of the two senses of the term explained above. "The child of wisdom and of chance" (as Mr. Strachey has called it in his *Queen Victoria*), the constitution is an aggregate of principles and practices which one could hope to bring together only by exhaustively surveying a thousand years and more of history, by laying hold of a statute here and a judicial decision there, by taking constant account of the hardening of political practices into established customs, and by probing to their inmost recesses the mechanisms of lawmaking, administration, public finance, justice, and elections, as they have been in the past, and as they actually operate before the spectator's eyes. Obviously, by no such process of growth could anything approaching symmetry and logic have been attained; and truly enough, as Sir William Anson remarks, the constitution presents the aspect of a "rambling structure." There are, to be sure, great unifying principles which impart coherence and stability; and educated Englishmen have a common and sufficient understanding of what these principles are. Nevertheless, the life of the constitution, like that of all English law, has been not logic, but experience.[1]

ELEMENTS OF WHICH THE CONSTITUTION IS COMPOSED:

1. LAW

One who undertakes by process of dissection to discover the essential elements of which the constitution is composed will find them falling into two great categories or groups: (1) the "law of the constitution," and (2) the conventions or customs. Contrary to an assumption sometimes encountered, the distinction is not that between written and unwritten parts of the constitution, for, as will be explained, there is a good deal of constitutional law which has never been reduced to written form. Speaking broadly, the law of the constitution is, rather, those parts of it which the courts will recognize and enforce; the conventions, those parts which, even though in practice no less real and effective than the law, are not enforceable through the courts—or, if they should prove so, would forthwith cease to be conventions and

[1] It is interesting to observe that, although England herself has no written constitution, constitutions of the sort abound throughout the British Empire. Every dominion, every colony, and nearly every protectorate and mandated territory is so equipped, as is also Northern Ireland.

become parts of the law. Viewed more closely, the law, in turn, is found to contain four principal elements or factors. First, there are certain historic documents embodying solemn agreements, or engagements, entered into at times of political stress or crisis. Of such nature are the Great Charter (those portions of it, at all events, which remain applicable in our day), the Petition of Right, and the Bill of Rights.[1] Second, there are parliamentary statutes defining the powers of the crown, guaranteeing civil rights, regulating the suffrage, establishing courts, and creating other governmental machinery—obvious examples being the Habeas Corpus Act of 1679, the Act of Settlement of 1701, the Septennial Act of 1716, the Reform Acts of 1832, 1867, and 1884, the Municipal Corporations Act of 1835, the Parliamentary and Municipal Elections Act of 1872, the Judicature Acts of 1873–76, the Local Government Acts of 1888, 1894, 1929, and 1933, the Parliament Act of 1911, the Representation of the People Act of 1918, the Government of Ireland Act of 1922, the Statute of Westminster of 1931, and the Ministers of the Crown Act of 1937. Third, there are judicial decisions fixing the meanings and limits of charters and statutes, very much as do judicial decisions in the United States, with the important difference that in England, as we shall see, no act of the national legislature is ever pronounced "unconstitutional."[2] Fourth, there are principles and rules of common law—many of them—pertaining to functions, powers, methods, and relationships of government.[3] These principles and rules grew up entirely on the basis of usage and were never enacted by Parliament or otherwise declared at any given time to be law. Nevertheless they embrace some of the most fundamental features of the governmental and legal system and are fully accepted and enforced as law. The prerogative of the crown, for example, rests almost entirely on common law; likewise the right of trial by jury in criminal cases and the right of freedom of speech and of assembly. The first three elements enumerated, *i.e.*, fundamental political engagements, statutes, and judicial decisions, exist solely, or almost so, in written form; and it may be added that as constitutional questions more and more find settlement in statutes and court decisions, the constitution tends to take on written form in ever-increasing degree. The rules of the common law, public as well as private, however, have never been reduced

[1] The Bill of Rights was, to be sure, cast in the form of a statute, and hence might be included under the category next mentioned.

[2] A convenient collection of such decisions is D. L. Keir and F. H. Lawson, *Cases in Constitutional Law* (Oxford, 1928).

[3] See pp. 325–329 below.

to writing except in so far as they find mention in reports, legal opinions, and of course judicial decisions.

2. CONVENTIONS

Finally, there are those portions of the constitution which we have been taught by Professor A. V. Dicey to call "the conventions."[1] The "law" of the constitution, composed of the four elements that have been enumerated, is law in the strictest sense and, whether written or unwritten, is, as we have said, normally enforceable through the courts. It is, for example, a law that the crown may not refuse to be bound by, or to carry out, an act of Parliament, and if a court were called upon to deal with a case involving an attempt at such evasion, it would proceed accordingly. The conventions, on the other hand, although they may, and frequently do, relate to matters of the utmost importance (including, to a very large extent, the interrelations of the different parts of the government), are not thus enforceable. They consist of understandings, habits, or practices which, although only rules of political morality,[2] regulate a large proportion of the actual day-to-day relations and activities of even the most important of the public authorities—understandings, habits, and practices which clothe the dry bones of the law with flesh, make the legal constitution work, and keep it in touch with changing social needs and political ideas. Most of them will be found described in text-books and treatises. But they do not appear in the statute-books or in any statement of the law, written or unwritten—rightly enough, because, although parts of the constitution, they are not law. It is, for example, by virtue of conventions of the constitution (not laws) that Parliament is convoked at least once every year, that not all ministers are cabinet members, that the speaker of the House of Commons takes no part in politics and in turn is reelected as long as he is willing to serve, that when the House of Lords is sitting as a court only the "law lords" attend,[3] and that a ministry which has lost the confidence of the House of Commons retires from office unless it chooses to appeal to the country at a general election in the hope of recovering a parliamentary majority. Until 1937, the cabinet and all that the cabinet, as such, stands for, rested almost entirely upon convention.[4] Of course, as has been suggested above, usage or convention plays a very large part in all politi-

[1] The term was first used in this connection in his *Introduction to the Study of the Law of the Constitution*, published originally in 1885.

[2] This phrase was applied to them by John Stuart Mill.

[3] Among less significant parliamentary conventions are the opening of sessions on Tuesdays (because Puritans in past centuries objected to travelling on Sunday) and the closing of sessions before August 12 (in the interest of grouse-shooting!).

[4] See p. 77 below.

cal systems; certainly it is so in the United States, where, indeed, convention forms, in the opinion of some students, quite as large a part of the actual working constitution as in England.[1] After all, however, England is the classic land of convention; no one can hope to understand the country's government without paying quite as much attention to customs and usages as to positive rules of law.

WHY THE CONVENTIONS ARE OBSERVED

What is it that gives the conventions force? They are not law, but only a species of "political morality." No court can be invoked to give them effect, and yet the government would become something very different from the thing that it is—indeed, could hardly go on at all—if they were not observed. What is the sanction, as the lawyers would say, behind them?

At the outset, it should be observed that the recognized conventions or usages are not, as a matter of fact, equally inviolable. All are of the essence of custom, and it goes without saying that some customs are regarded as more useful than others, and that some are more, some less, accepted and entrenched. On all hands, customs are on the road to becoming established conventions. Some, however, are deflected and never arrive at the goal. Furthermore, a practice which is believed to have established itself so securely that it will never be departed from may, after all, some day be disregarded.[2] Times and ideas change; new necessities arise; forces that shape the actual character of the government wax and wane. Whether a particular custom is to be considered as having definitely taken its place as a part of the constitution is often a matter of sheer guess-work. How long it will maintain itself in a system which changes as subtly and insensibly as the clouds is often equally a matter of doubt. All of which is tantamount to saying that anyone attempting to stake out the exact boundaries of the English constitution, conventional as well as legal, will indeed have a difficult task.

But there are many great maxims which are never violated, and are universally admitted to be inviolable. What is it that gives these their binding character? It is not easy to answer the question to one's

[1] Cf. A. V. Dicey, *The Law of the Constitution* (8th ed.), 28, note. On the conventions of the American constitution, see J. Bryce, *The American Commonwealth* (3rd ed.), I, Chaps xxxiv-xxxv, and H. W. Horwill, *The Usages of the American Constitution* (London, 1925). It is interesting to note that both of these discussions of the subject are by English authors.

[2] For example, whereas Bagehot was entirely right in saying, some 70 years ago, that a convention of the constitution required a ministry in which the House of Commons had expressed want of confidence to resign, convention nowadays clearly entitles a ministry so situated to ask for a dissolution and appeal to the electorate.

entire satisfaction, but two or three considerations help to an understanding of the matter. The first of these is that many of the most important conventions are so bound up with the laws that they cannot be violated without infraction of law itself, or at any rate without entailing other grave consequences. Mr. Dicey found in this the conventions' principal sanction. The illustration which he was fond of using was the maxim that Parliament shall assemble at least once a year. Suppose, he said, that Parliament should be prorogued in such a manner that a full year were to elapse without a meeting. The annual Army Act would expire and the government would lose all disciplinary authority over the troops. Furthermore, although most of the revenue is collected and some of it is spent without annual authorization, certain taxes would lapse and there would be no authority to pay out a penny on the army, the navy, or the civil service. An annual meeting of Parliament, although only a custom which no court would attempt to enforce, is therefore a practical necessity, without it, public officials would find themselves performing illegal acts—or the wheels of government would simply stop. The violation of various other conventions would lead to equally bad consequences.[1]

CONSIDERATIONS OF PRACTICAL NECESSITY

This is, indeed, a weighty argument. It does not, however, quite cover the case. For, as former President Lowell of Harvard suggests, England is not obliged to continue forever holding annual sessions of Parliament simply because a new mutiny act must be passed and new appropriations made every twelve months, Parliament, with its plenitude of power, could as well as not pass a permanent army act, grant the existing annual taxes for a term of years, and charge all ordinary expenses on the Consolidated Fund, from which many charges already are paid without annual authorization.[2] The conventions are supported by something more than merely the realization that to violate them might mean to collide with the law, the law itself could be changed. For this additional sanction we must look mainly to the power of tradition, perhaps better, the force of public opinion. "In the main," continues Lowell, "the conventions are observed because they are a code of honor. They are, as it were, the rules of the game, and the single class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligation of this kind."[3] The

OTHER AND WEIGHTIER REASONS

[1] *Law of the Constitution* (8th ed.), 441–450.
[2] *The Government of England* (New York, 1908), I, 12. Cf p 99 below.
[3] *Ibid*, I, 12–13

nation expects, and has a right to expect, that Parliament will be convened annually, and that a ministry that cannot obtain majority support in the House of Commons will resign. The outburst of feeling that would follow if these expectations were not met is a very good guarantee that they will be met. With the broadening of the popular basis of government in later times, to some extent breaking the monopoly which the aristocracy of birth and education formerly enjoyed in managing the nation's affairs, the effectiveness of tradition and opinion might conceivably decline; and some apprehension has been felt lest, in the new era which Britain has entered, the conventions will be less scrupulously upheld than in the past. Two different periods of Labor government (1924 and 1929–31), however, furnished little evidence of any tendency of the sort.

HOW THE CONSTITUTION GROWS

Enough has been said about the origins and content of the British constitution to establish the fact that, while deeply rooted in the past, it is nevertheless a living organism, changing all of the time before our very eyes. How it grows, and wherein its mode of development resembles or differs from that of other constitutions, is an interesting matter to consider. In the first place, it does not move forward by a succession of sudden leaps, after the manner of the constitution of France since 1789, or even that of Germany or other states which, as a result of wars or revolutions, have swung abruptly from one form of polity to another. On the contrary, transitions have as a rule been so gradual, deference to tradition so habitual, and the disposition to cling to accustomed names and forms, even when the spirit has changed, so deep-seated, that the constitutional history of Britain displays a continuity hardly paralleled in any other land. At no time, as the historian Freeman wrote, "has the tie between the present and the past been rent asunder; at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory." [1] Even in the seventeenth century, when war and revolution seemed to have precipitated a complete break in the country's orderly constitutional progress, what was actually happening, as we can see plainly enough now, was merely the vindication and fuller establishment of principles that had been developing for two or three hundred years. If one may be permitted a paradox, the Englishman is conservative even in his revolutions.

CONTRASTS OF THEORY AND PRACTICE

So far does this characteristic prevail that some curious things result. Practice quite outruns theory, and there come to be, in a sense, two consti-

[1] *The Growth of the English Constitution* (4th ed., London, 1884), 19.

tutions rather than one—the constitution that embodies the system as it is supposed to be and the constitution that embodies the system actually existing. Take, for example, a matter to be dealt with more fully later—the relation between the crown and Parliament. Seven or eight centuries ago, England was, to all intents and purposes, an absolute monarchy. For many generations now, however, she has been not only a limited monarchy, but (in the phrase of Mr. and Mrs. Webb) a "crowned republic," with one of the most democratic systems of government in the world. As great a change has come over her actual political condition as can readily be conceived. Nevertheless, the theory has never been discarded that the government is the king's and not the people's. The law is the king's law; justice is the king's, and is dispensed by the king's judges; the ministers and all their subordinates are "servants of the crown", no parliamentary election can be held except by the king's writs; no parliamentary enactment is enforceable until it has received the king's assent, no civil or military officer may be appointed except in the king's name. The fleets form His Majesty's navy, government documents are published by His Majesty's stationery office, the people are His Majesty's "loyal subjects." All this, of course, is sheer legal theory, separated from the actualities as one pole from its opposite. The simple truth is that Parliament enacts new laws, makes and unmakes ministries, controls the army and the navy, levies taxes and appropriates money; that, with few (although important) exceptions, where the king acts at all, he acts only through his ministers; and that even in the case of nearly all of the exceptions, he acts only on ministerial advice [1] The wary student will not be misled, but in threading his way through the glacial drift of history he has to be constantly on his guard There are plenty of contrasts of theory and fact in all governments. But in none do they form the very warp and woof of the fabric as in the British.

MODES OF CONSTITUTIONAL CHANGE

What are the ways in which the actual, working constitution progressively adapts itself to changing ideas and needs? Sometimes war and revolution have played a part. But for upwards of three hundred years, no resort to violence has proved necessary.[2] Sometimes conditions of special national stress *e g.*, during the World War and succeeding years, precipitate innovation and experiment.[3] But other long periods

[1] See pp. 55–57 below

[2] A possible exception might be the events which led up to the creation of the Irish Free State in 1922 See Chap xx below

[3] How unusual events such as the establishment of the tri-party "national" government of Ramsay MacDonald in 1931 test the stability of the constitution is brought out in H. J Laski, *The Crisis and the Constitution* (London, 1932).

are marked by only slow and placid growth. From what has already been said about the elements of which the constitution is composed, the answer to the query can readily be inferred. Judicial decisions contribute something. But, in the main, the instrumentalities of change are two—custom and legislation. Of the former, enough has been said to impress the fact that the growth of conventions is not something merely historical, a chapter that is closed, but a continuing process still actively building constitutional principles and rules. Statute as a mode of constitutional growth requires, however, a word of comment—the more by reason of the fact that nowadays it is considerably the most important of all. It involves, of course, constitutional amendment by act of Parliament.

It will strike the American student as strange that Parliament can amend the constitution at all. For in this country we have proceeded on the theory that constitution-making and amending powers should be kept distinct from the powers of ordinary lawmaking and entrusted to different hands. Our national Congress may, indeed, propose constitutional amendments, by a two-thirds vote in both houses; but no amendment can become effective until it has been ratified, by legislature, or by specially chosen convention, in three-fourths of the states. In France, a constitutional amendment can be adopted only by the senators and deputies sitting together in National Assembly, not by the two houses of Parliament deliberating separately as upon statutes; and in many other countries special devices or processes, of one kind or another, are required to be brought into play before the written fundamental law can be changed.

DE TOCQUEVILLE'S DOUBTS

Great Britain, however, knows nothing of such distinctions. There, the unlimited legal power which Parliament possesses to enact ordinary statutes is matched only by its power to enact measures adding to or otherwise modifying the constitution. No departures from the regular organization and procedure are required, and there are no legal limits whatever to the changes that may be provided for. "Our Parliament," observes Anson, "can make laws protecting wild birds or shell-fish, and with the same procedure could break the connections of Church and State, or give political power to two millions of citizens, and redistribute it among new constituencies." [1] Parliament has, of course, actually enfranchised many more than two million citizens and has rearranged constituencies throughout the length and breadth of the land; and it might have been added that it could depose the king, abolish the monarchy, deprive all peers of seats in the House of Lords, or suppress that chamber altogether, or, in fact, do any one

[1] *Law and Custom of the Constitution* (5th ed., Oxford, 1922), I, 380.

or all of a score of other things that would make the British scheme of government unrecognizable by those who know it best.[1] This extraordinary fact led Alexis de Tocqueville, a hundred years ago, to assert that there is no such thing as an English constitution.[2] As a Frenchman, he was accustomed, as is an American, to think of a constitution as a document or related group of documents, not only promulgated at a given time and setting forth in logical array the framework and principles of a scheme of government, but subject to amendment, not at the hand of the government itself, but only by the same ultimate agency—distinct from and superior to the government—which made the instrument in the first place. He could discern nothing of this nature in England, on the contrary, every feature of the governmental and legal system there was open to change at any time, to any extent, by simple action of the government—in effect, by only one branch of the government at that, *i.e.*, Parliament. Hence it seemed to him that there was nothing in England really worthy of being considered a constitution.[3]

ACTUAL LIMITATIONS ON PARLIAMENT'S POWER

De Tocqueville would not have been so far wrong, save for one important consideration, namely, that legal power to amend and actual, usable power to do so are two very different things It does not follow that merely because kingship and jury trial and private property and the suffrage are legally at the mercy of Parliament, they are in danger of being swept away. Parliament, after all, is composed of men who, with few exceptions, are respected members of a well-ordered society, endowed with sense, and alive to their responsibility for safeguarding the country's political heritage. They live and work under the restraint of powerful traditions and will no more run riot with the constitution than if it were weighted down with guarantees designed to keep it out of their control. Legally, the constitution is undeniably as flexible as any on earth, actually, it is decidedly less fluid than might be inferred from what the writers say.

Hardly a session of Parliament, however, fails to yield legislation introducing some sort of constitutional change. Sometimes a genu-

[1] Although not enacted as an operative clause, the preamble of the Statute of Westminster (1931) affirms, however, that the royal succession and royal "style and titles" ought to be changed only with the consent of the parliaments of the dominions

[2] *Oeuvres Complètes*, I, 166–167.

[3] Interestingly enough, an important contemporary English writer arrives at the same conclusion, although in his case it is because there is no *written* constitution. W I Jennings, *The Law and the Constitution* (London, 1933), 38

ine innovation results, as when, in 1918, the parliamentary suffrage was conferred upon women. Oftener than not, however, statute merely translates convention into law, usually, of course, with more or less elaboration or other readjustment. Down to 1931, for example, it was entirely by convention that Canada and the other self-governing dominions were dealt with differently from ordinary colonies. The matter having become involved in much doubt and controversy, the Statute of Westminster undertook to clarify the situation and make it a matter of law. Down to 1937, as has been observed, the very core of the present-day governmental system, the cabinet, rested only on custom; but in regulating salaries and making various other provisions, the Ministers of the Crown Act of that year gave the institution at last a definite statutory basis. Under stress of modern conditions, the tendency is, indeed, for more and more of the actual working constitution to be invested with legal sanction, and by the same token, to assume written form.[1]

CONSTITUTIONAL CHANGE BY MEANS OF STATUTE

The constitution being what it is, certain major features of the British governmental system naturally follow. The first is its unitary, or non-federal, form. A federal system of government prevails where

[1] Some recent writers consider the classic distinction between law and convention overworked; and their views are worth considering. Cf. W. I. Jennings, *Cabinet Government* (London, 1936), Chap. i.

A constitutional question of the first magnitude may come to a head at a time when a new House of Commons has not been elected in three or four years, and even if there has been an election within less time than that, the matter at issue may not have been prominently before the voters It has often been argued that under these circumstances Parliament ought not to proceed with an amendment until after the people shall have had a chance to express themselves upon it at a general election. The principle of the referendum, as thus proposed, has not, however, won common acceptance, and Parliament still acts with entire freedom—as is illustrated by the enfranchisement of eight and one-half million women in 1918 by a parliament elected eight years previously, and by the creation of the Irish Free State in 1922 under a plan never submitted to the electorate.

Among the best brief discussions of the British constitution are A. L. Lowell, *Government of England*, I, 1–15, W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 1–13, S. Low, *The Governance of England* (new ed.), 1–14, and W. I. Jennings, *op. cit.*, 24–40. A more extended analysis is A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (8th ed.), already cited. A highly interesting and significant work on the subject is W. Bagehot, *The English Constitution*, first published as a series of articles in the initial numbers of the *Fortnightly Review* in 1865–66 and brought out in book form at London in 1867. Bagehot was a keen-minded journalist who took pleasure in writing of the constitution as it actually was in his day, rather than of its theoretical and legalistic aspects only, as lawyers like Blackstone were wont to do. The most recent edition of *The English Constitution* (World's Classics series, London, 1928) contains an illuminating introduction by Lord Balfour. Lord Bryce's famous discussion of flexible and rigid constitutions will be found in his *Studies in History and Jurisprudence* (New York, 1901), Chap. iii. (A 9th edition of Dicey's book appeared too late to be cited.)

the political sovereign (whatever form it may take in the particular case) has distributed the powers of government among certain agencies, (1) central and (2) divisional or regional, and has done so through the medium of constitutional provisions which neither the central government nor any divisional government has power to alter. The important thing is not the territorial distribution of powers, because such a distribution must take place under all forms of government, nor yet the amount or kinds of power distributed, but the fact that the distribution is made and maintained by some recognized authority superior to both central and divisional governments. The United States has a federal form of government because the partition of powers between the national government and the state governments is made by the sovereign people, through the national constitution, and cannot be changed by the government at Washington any more than by that at Albany or Harrisburg or Indianapolis.[1] On the other hand, the government of England is unitary, because all power is concentrated in a single government, centering at London, which has created—or at all events accepted and authorized—the counties, boroughs, and other local political areas, which has endowed them, as subordinate districts, with such powers as it chose to bestow, and which is free to alter their organization and powers at any time, or even to abolish them altogether.[2] The governmental systems of France, Italy, Belgium, Japan, and

BASIC FEATURES OF THE GOVERNMENTAL SYSTEM:

1. UNITARY, NOT FEDERAL

[1] This definition of federalism is frankly legalistic and does not seem in every case to square with the facts No one needs to be told that in all federally organized countries the powers of the central government tend to grow at the expense of those of the divisional governments, by usage and by legislation, and quite without any amendment of the formal constitution. Certainly this is true in the United States and Switzerland, as it also was in the old German Empire Nevertheless, in the eye of constitutional law these changes represent, not acquisitions of new powers, but only amplifications or fulfillments of powers already conferred On the nature, advantages, and disadvantages of the federal form of government, see J W. Garner, *Political Science and Government*, 417–422, and W. F Willoughby, *The Government of Modern States* (rev. ed , New York, 1936), Chap. xii

[2] This statement is made primarily with reference to England alone. Even Great Britain and the United Kingdom, however, are not federal, for the reason that the special positions occupied by Scotland and Northern Ireland rest entirely upon statutes passed by the parliament at Westminster and legally repealable at its discretion. Various proposals for "devolution," "home rule all around," etc , look in the direction of federalism, although if they were adopted the result would not necessarily, or even likely, be a true federal system (see pp. 264–269 below). On the other hand, Eire (southern Ireland) has far too much autonomy to be regarded as joined with the rest of the British Isles on a federal basis.

most other states are of this same character; and Germany, once federal, has been made highly unitary by the Nazis.[1]

2. SEPARATION OF POWERS AS MODIFIED BY CONCENTRATION OF RESPONSIBILITY

A second feature of the British system of government is the curious relationship existing between the two somewhat incongruous principles of separation of powers and (to use Mr. Ramsay Muir's apt phrase) concentration of responsibility. Influenced by the writings of Montesquieu and Locke, and following what they conceived to be the fundamental plan of the English government itself, the architects of early American constitutions, both state and national, grouped the functions of government into three major categories—executive, legislative, and judicial—and assigned each to an essentially separate part of the governmental machinery. To be sure, executive, legislature, and courts were not placed in completely water-tight compartments; for at various points one branch was given a check upon another, as, for example, the president's veto upon measures passed by Congress. But the three were made sufficiently coordinate to prevent any one of them, it was believed, from gaining anything like a monopoly of power and thereby jeopardizing the liberties of the people. In Britain, there is likewise an appearance of separation. The crown is the executive; Parliament is the legislature; the courts form the judiciary. Furthermore, there is *effective* separation, in the important sense that the working executive, *i.e.*, the ministry, is, in its purely executive and administrative capacity, subject to a good deal less control by the legislature than are our president and his subordinates; in the sense also that the judges not only are surrounded by ample guarantees of independence [2] but take no such part in determining the law as do American judges through the process of judicial review. Nevertheless, the outstanding facts—apart from all theory—of the British national government today are (1) the common source or origin of all powers, historically, in the crown, and (2) the leadership and dominance (some call it dictatorship) of "the government," *i.e.*, the cabinet ministers (acting for the crown), not only in administration, but in legislation as well. There is nothing comparable with such ministerial control in the United States. Our president, when he rises to the full height of his powers, is an imposing figure; but as a rule he falls considerably short of the head of the British ministry, *i.e.*, the prime minister. Despite various means of making his influ-

[1] See pp 774–780 below.

[2] Chiefly under terms of the Act of Settlement of 1701.

ence felt, separation of powers keeps him at one end of Pennsylvania Avenue and Congress at the other, often working at cross purposes [1] At London, concentration of responsibility, implicit in the cabinet system and held back by no constitutional barriers, cuts through every obstacle, and brings the prime minister and his colleagues into the position of an "all-powerful 'government,' leaving it to Parliament and the courts merely to regulate and check its action." [2]

3. LEGAL SUPREMACY OF PARLIAMENT

Dominant as the group of ministers forming the cabinet has come to be, a third fundamental of the British system still stands, *i.e.*, the ultimate supremacy and legal omnipotence of Parliament, after all, cabinet members themselves are members also of the larger body, and the latter's legal amplitude of power is not impaired by the circumstance that it is those of its members who belong also to the cabinet who largely decide what is to be done. Leaving out of account practical and moral restraints which operate powerfully upon it, and thinking only of what may be done under the law, Parliament can alter or rescind any charter, agreement, or statute, it can cause any official of the government to be dismissed and any judicial decision to be made of no effect; it can put an end to any usage and overturn any rule of common law; it can bend the constitution in any direction that it desires.[3]

ALL ACTS OF PARLIAMENT "CONSTITUTIONAL"

It follows that every parliamentary act is "constitutional"; if a measure is passed which is contrary to the constitution as it has hitherto stood, the constitution simply becomes something different

[1] The extraordinary powers voted to President Roosevelt by Congress in 1933–34 undoubtedly gave the American executive as much actual control of affairs as any British prime minister or cabinet could ever hope to enjoy. But in the main this represented only a temporary departure from the regular order of things, similar to that witnessed under war-time conditions in the administrations of Presidents Lincoln and Wilson Besides, in a long series of decisions handed down by the Supreme Court in 1935–36, some of the most far-reaching grants were held unconstitutional. See F. A Ogg and P. O. Ray, *Introduction to American Government* (6th ed., New York, 1938), Chaps xxvii–xxviii On the ups and downs of presidential leadership in the United States, see *ibid*, pp 408–413.

[2] R Muir, *How Britain Is Governed* (3rd ed, London, 1935), 21. This matter will be touched on in another connection (see p 254 below), and hence will not be elaborated here. On the history and applications of the doctrine of separation of powers, see H Finer, *The Theory and Practice of Modern Government* (New York, 1932), I, Chap vi, and W. F Willoughby, *The Government of Modern States* (rev ed), Chaps xiv–xv, and on the English situation in particular, W I Jennings, *The Law of the Constitution*, 8–24

[3] W I Jennings, *op cit*, 110–128 It should be noted, however, that the Parliament which is thus legally omnipotent consists, technically, of three parts—king, House of Lords, and House of Commons.

in that regard. One who follows English political discussion, even from afar, will now and then hear it charged that a legislative proposal, or even a law, is unconstitutional. But this means only that somebody considers the offending proposal or act to be inconsistent with previously accepted fundamental law, or with an established usage, or with international law, or perhaps only with the accepted standards of morality. An act so regarded is legally quite as valid and enforceable as if no question had been raised. No one can allege that it is *ultra vires*. The word of Parliament, *i.e.*, the *latest* word, is law, however it may cut across existing constitutional arrangements; and as such it will be enforced by the courts. The only way of getting around it is to procure its repeal by the same or a succeeding parliament. Procedures resembling the American practice of judicial review have gained a foothold in Switzerland, Norway, Rumania, Eire, and a few other European countries.[1] England, however—notwithstanding some temporary tendencies in the same direction in the seventeenth century—still holds to the principle that whatever Parliament enacts is law and remains such until repealed by Parliament itself.[2]

So far as England alone is concerned, the unitary form of the government has averted those clashes between rival authorities, central and divisional, which made judicial review a practical necessity in the United States. The complicated, and sometimes tense, relations between England and Scotland, and between Great Britain and Ireland, might, however, have given rise to something of the kind but for the one great barrier which has always stood, and still stands, in the way, *i.e.*, the idea of the supremacy of Parliament as naturally held in a country devoted to popular government and not committed to any rigid doctrine of separation of powers. As it is, the courts simply accept the statutes put forth at Westminster and enforce them. In applying them to particular cases, the judges have to determine what they mean; and sometimes this involves a rather important

[1] For a brief account of this development, see J. W. Garner, *Political Science and Government*, 759–770. Cf. p. 435 below.

[2] There is, to be sure, judicial review of orders in council and administrative rules (see p. 115 below). But this does not touch the matter of the constitutionality of statutes. The only trace of judicial review of statutes in all British practice is the right of the judicial committee of the privy council (see p. 62 below) to advise the crown to declare unconstitutional an act of a dominion, or other colonial, legislature. This, of course, in no wise affects legislation at Westminster. It is interesting to note that judicial review is practiced freely in Canada, Australia, South Africa, and Eire (southern Ireland). In the last-mentioned jurisdiction, the constitution expressly confers the function upon the courts; elsewhere they have developed it without direct constitutional authority, as in the instance of the United States.

power of interpretation.[1] Beyond this, however, they have no discretion. Punctuated at every turn by Supreme Court decisions on the constitutionality of acts of Congress and of the state legislatures, the constitutional history of the United States presents an appearance altogether different from that of the mother land.

4. PROTECTION OF CIVIL RIGHTS

The foregoing remarks about the legally unlimited powers of Parliament may lead one to wonder what protection the individual citizen, or "subject," has against infringement of his personal liberties. What is to prevent Parliament from passing acts arbitrarily curtailing his rights, or from permitting other agencies of the government to disregard them? On what basis, indeed, does he enjoy any rights and liberties at all? Royal tyranny is a thing of the past. But what about the tyranny that might be practiced, or condoned, by an omnipotent legislature?

A. BILLS OF RIGHTS IN VARIOUS COUNTRIES

In other lands, the commonest mode of guaranteeing civil rights is that of enumerating them in the written constitution—either as a formal "bill of rights" or in a series of less connected provisions amounting to the same thing—thereby placing squarely upon the government an obligation to observe and uphold them. Bills of rights of this nature are found in the constitutions of nearly all of the American states, and although none was originally included in the national constitution, the defect, as it was considered, was soon remedied by the addition of the first nine amendments. A "Declaration of the Rights of Man and of the Citizen," promulgated in 1789, was prefixed to the French constitution of 1791, and, although not found in the fundamental laws of 1875 under which the Republic is now governed, it is by many regarded as by implication still in effect.[2] Nearly every European state that adopted a new constitution after the World War gave much prominence to provisions of this character—for example, Germany, which bracketed with solemn guarantees of rights an equally imposing enumeration of duties and obligations.[3]

[1] See H J Laski, *Parliamentary Government in England*, Chap. VII, on "Parliament and the Courts"

[2] See p 405 below

[3] See pp 646–649 below Cf. A J Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), Chap XII, and A Headlam-Morley, *The New Democratic Constitutions of Europe* (London, 1928), Chaps II–III, XV Since the rise of the Hitler dictatorship in Germany, that country has surrendered to the "authoritarian," or "totalitarian," concept, which refuses to recognize the existence of any civil rights that are not subject to curtailment or suppression whenever such action is deemed to be in the interest of the government as conceived by those holding the reins of power The same situation exists in Italy, Russia, and indeed under dictatorial régimes generally

B. THE BRITISH METHOD

In Britain, too, there is no lack of constitutional guarantees of the kind, even though they are not assembled in any single document. Some, *e.g.*, the privilege of the writ of habeas corpus, the right to bear arms, the right of petition, and immunity from excessive bail and from cruel and unusual punishments, are expressly provided for in great statutes like the Bill of Rights which from time to time have taken their places in the growing body of written constitutional law. Others, as freedom of speech and assembly and freedom of religion, rest no less solidly upon guarantees of common law—most fundamentally, upon the common-law principle that one may lawfully do anything *which is not forbidden by law*. Under this principle, it is not necessary that, in order to exist, a given right or liberty be guaranteed positively in a statute or other formal act; by common law, it exists if, and in so far as, it is not positively forbidden—for example, freedom of speech in so far as saying what one pleases does not involve transgression of the laws relating to sedition, libel, blasphemy, perjury, etc. Back of all else, too, stands that most precious of all principles of English polity, the "rule of law," never indeed enacted as a statute, but implicit in a long line of parliamentary measures and judicial decisions, and in any event as securely grounded in common law as anything can well be. As defined by an English jurist, the rule of law means "the supremacy or dominance of law, as distinguished from mere arbitrariness, or from some alternative mode, which is not law, of determining or disposing of the rights of individuals." [1] In other words, under the rule of law, obligations may not be imposed by the state, nor property interfered with, nor personal liberty curtailed, except in accordance with accepted principles of law and through the action of legally competent authorities.

RESTRICTIONS IMPOSED

To be sure, Parliament can, if it chooses, limit, suspend, or entirely withdraw any given right; it has the ultimate power, if it is so minded, to set aside the rule of law itself. Under the stress of war-time conditions in 1914–18, it imposed (or permitted other authorities to impose) numerous drastic restrictions upon commonly recognized rights, notably in the famous Defense of the Realm Act of 1914. With a view to restraining persons who were suspected of seeking to seduce soldiers and sailors from their duty or allegiance, it in 1934 passed an Incitement to Disaffection Act which, although softened considerably before final adoption, imposed more stringent restrictions than some people thought justifiable. In 1936, it was prompted by dis-

[1] Lord Hewart of Bury, *The New Despotism* (London, 1929), 19.

turbances incident to fascist demonstrations to provide, in a Public Order Act, for restrictions upon public meetings and processions.[1] Tradition and public opinion, however, stand wholly opposed to any infringement not manifestly necessitated by national emergency or danger, and certainly to prolonging such infringement beyond duration of the conditions which originally prompted it. Furthermore, it is to be observed (1) that in many countries (*e.g.*, Germany under the Weimar constitution), where rights are supposed to be given special sanctity by being enumerated in a written fundamental law which the government has no power to modify, restrictions and exceptions are nevertheless authorized to be made by proper governmental authority, and (2) that even when no such express provision appears, guarantees of rights are not construed as absolute, but rather as subject to limitation when the national well-being requires.

YET ULTIMATE SECURITY

The fact is that, although at first glance civil rights seem to enjoy no such sheltered position in Britain as elsewhere, they are, both in law and in practice, as secure as anywhere in the world. After all, it is not paper declarations that supply the most effective guarantees of liberty, but rather the sanctions of tradition, principle, and public opinion Freedom of speech is as truly a part of the British way of life as is the responsibility of ministers. Neither rests upon written law, neither would be observed more consistently if it did so.[2]

[1] On this measure, which stirred a great deal of discussion, see Anon, *Debate in British House of Commons on Public Order Bill*, Nov 16, 1936, *Internat Conciliation*, Jan, 1937, W I Jennings, "Public Order," *Polit Quar.*, Jan–Mar., 1937, and Anon, "Public Order and the Right of Assembly in England and the United States, A Comparative Study," *Yale Law Jour*, Jan, 1938

[2] On the history of personal liberty in England, see T E May and F Holland, *Constitutional History of England*, II, Chaps IX-XIV. Full discussion of the subject will be found in A V Dicey, *The Law of the Constitution* (8th ed), Chaps IV-VIII, E Jenks, *The Book of English Law* (London, 1928), Chaps X-XII, and W I. Jennings, *The Law and the Constitution*, Chap VIII There is comment on the disadvantages of a written bill of rights in W F. Willoughby, *The Government of Modern States* (rev ed), 31–32 The basis and status of civil rights in the United States may be compared by consulting F A Ogg and P. O Ray, *Introduction to American Government* (6th ed.), Chap. ix.

CHAPTER III

The Crown—Kingship and Its Uses

CLOSE to the center of the picture of English government now to be unfolded stands the Mother of Parliaments, and it might be expected that we should direct our attention first of all to that venerable yet ever-changing institution. To comprehend what Parliament actually is and does, however, one must have some acquaintance with various more or less related authorities and agencies, especially those that have to do with policy-framing and administration. Besides, it will be convenient to deal with the major instrumentality of representative government—the House of Commons—at a point where it will be feasible to go directly on with a study of political parties. Accordingly, we open our survey by bringing into view the king, the privy council, the ministers, the cabinet, and the civil service. After all, in the light of observations already made concerning the heightened power and importance of the "government," (to all intents and purposes, the cabinet), we shall not be starting far from the actual focus of the constitutional system as it now operates.

KING AND "CROWN" Hardly is the first step taken before we come upon a most striking illustration of the constitution's penchant for disguises, namely, the contrast existing between theory and reality in the position occupied by the king—in other words, the distinction between king and "crown" which Gladstone once pronounced the most vital fact in English constitutional practice. Various writers in times past have taken considerable delight in startling their readers with staccato sentences enumerating the weighty and devastating things that the British sovereign still has it in his power to do. In the first book in which the true character of cabinet government was ever explained, Walter Bagehot, two generations ago, wrote that Queen Victoria could disband the army, dismiss the navy, make a peace by the cession of Cornwall, begin a war for the conquest of Brittany, make every subject a peer, pardon all offenders, and do other things too frightful to contemplate.[1] A dec-

[1] *The English Constitution* (2nd ed., London, 1872), Introd., xxvii. "Oh, the wicked man to write such a story," the Queen is said to have exclaimed when the passage was brought to her attention, "surely my people do not believe him."

ade later, Gladstone spoke of the sovereign as receiving and holding all revenues, appointing and dismissing ministers, making treaties, waging war, concluding peace, pardoning criminals, summoning and dissolving Parliament, "for the most part without any specified restraint of law," and under "an absolute immunity from consequences."[1] Legally, these observations were correct enough; and one would not have to go back many centuries to come upon a time when they would have been actually and literally true But of course neither the journalist nor the statesman meant for a moment to suggest that the Queen, or any other British sovereign in these days, would dream of doing any of the things mentioned. They meant only to call attention to an ultimate historic and legal principle of the constitution which never has been quite extinguished, even though nowadays it is as obsolete in practice as belief in Thor and Woden If speaking in terms of actualities, they would have said that the acts enumerated could be performed, not by the sovereign, but by the *crown*.

NATURE OF THE CROWN

What is the crown? That is a difficult question to answer in language that will seem clear and conclusive. Perhaps it can best be met, in somewhat roundabout fashion, by recalling what has happened to English kingship in the course of the centuries There was a time when each king was an elected and purely personal ruler. When a king died, there was an "interregnum"—a break (even though but momentary) in the continuity of government. Gradually, kingship, becoming hereditary, took on the character of an institution, an office, a function, which went on uninterruptedly regardless of the coming and going of individual monarchs. "Henry, Edward, or George may die," said Blackstone, "but the king survives them all." The king as a person was one thing; the king as an institution, with all the accumulated powers and traditions, was quite another. As yet, the king, for the most part, wielded these powers and carried on these traditions personally. But the institutionalizing of the royal function had opened a way, whenever it should be desired, to say to the king that while he might go on wearing the crown and enjoying the prestige, the actual powers and duties of which he was custodian were going to be transferred elsewhere, and that is precisely what the leaders of victorious parliamentary forces in the seventeenth and eighteenth centuries said to him. The king as a person did not lose everything; he still has an important rôle in public affairs. But appointment of officials, direction of administration, leadership in law-making, ini-

[1] *Gleanings of Past Years* (New York, 1889), I, 227.

tiative in policy-framing—all passed completely into other hands, *i.e.*, partly the hands of Parliament, but mainly those of the ministers, and in particular the cabinet. To this day, they are wielded in the king's name; in legal theory, the king is still the source of all authority. But the king that actually functions in relation to them is not the personal king, but rather the institutional king; and the institutional king is only a sort of fiction standing back of the actual supreme executive authority embodied in a subtle association of sovereign, ministers, and Parliament. This somewhat intangible synthesis of supreme authority is what we call the crown. Thus defined, the crown may indeed be, as Mr. Sidney Low has described it, "a convenient working hypothesis";[1] nevertheless, it is at the same time a real and essential feature of the country's governmental system. The concrete, visible embodiment of it is the cabinet, or, perhaps more accurately, the cabinet in conjunction with the permanent civil service. The Englishman commonly refers to it simply as "the government."

Thinking, then, of the crown as essentially the supreme executive authority in the state (in somewhat the same broad sense in which the president is the chief executive in the United States), and bearing in mind that even yet the king is not entirely dissociated from it in actual practice, as he certainly is not in legal theory, we may first take some note of the origins, scope, and nature of the powers of the crown, and then consider the position which the sovereign himself occupies and the reasons why kingship survives at all in one of the world's most advanced political democracies.

SOURCES OF POWERS OF THE CROWN

As they stand today, the powers of the crown are derived from two great sources, *i.e.*, prerogative and statute. The nature of statute is obvious enough. Any act of Parliament that assigns new duties to the executive authorities, provides for the appointment of new national officials, or in other ways extends the functions of the national government, adds by so much to the powers wielded in the name of the crown; and it goes without saying that such increases are numerous and important. But what is prerogative? As conveniently defined by Dicey, it is "the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the crown."[2] Originally, before the days of parliamentary control of public affairs—when, indeed, there was no Parliament at all—all powers rested upon this basis; all were conceived of as "prerogatives"

[1] *The Governance of England* (new ed., London, 1916), 255.
[2] *Law of the Constitution* (8th ed.), 420.

inhering in the person of the king. Later, Parliament began stripping away powers, even while sometimes also bestowing new ones, in addition, old powers fell into disuse and became obsolete. Such powers, however, as survived on the earlier basis, together with such newer ones as were picked up by usage as distinguished from statute, continued to form the prerogative, and to this day these powers constitute a very large and important part of the sum total possessed—in the main, "those [powers] which are essential for the maintenance of government, for preservation of the realm against internal tumults, for the conduct of relations with other states." [1] Prerogative, therefore, means, substantially, those powers which have not been granted—those which have been acquired by sheer assumption, confirmed by usage (perhaps also by judicial decision), and tolerated or accepted as features of the governmental system even after Parliament gained the authority to abolish or alter them at will. In point of fact, many crown powers as we find them today rest upon neither prerogative nor statute exclusively, being rather derived originally from prerogative but later defined or restricted by statute. And, after all, the question of whether a given power is derived from prerogative or from statute is of little practical importance. all are subject to parliamentary regulation, at least potentially, all are alike exercised under full responsibility to the House of Commons.

CHANGEABLENESS AND VARIETY OF THESE POWERS

From what has been said, it follows that the powers of the crown are continuously undergoing change—now being reduced at certain points and again being carried to new heights at others. Curtailment has come in three principal ways. The first is great contractual agreements between king and nation (or some part of the nation speaking for it), best illustrated by *Magna Carta*. The second is prohibitive legislation, of such nature as the clauses of the Bill of Rights forbidding suspending or dispensing with laws. The third is simple disuse, illustrated by the lapse, since the Tudor period, of the power of the crown to add to the membership of the House of Commons by arbitrary enfranchisement of boroughs, and the disappearance, since a somewhat earlier period, of the power to create peerages for life except by express authorization of Parliament. On the other hand, the crown's powers have been progressively augmented, both by custom (which may be regarded as contributing

[1] A. B Keith, *The King and the Imperial Crown* (London, 1936), 54, and succeeding pages for a very clear exposition of the relations of prerogative and statute The prerogative in a highly controversial period of English history is discussed in F. D. Wormuth, *The Royal Prerogative, 1603–1649* (Ithaca, N. Y., 1939)

new elements to the prerogative) and by legislation—in later centuries chiefly, of course, the latter. When, for example, Parliament adds an air service to the army, establishes a system of old-age pensions, authorizes a new tax, or passes a new immigration act, it imposes fresh duties of direction and control upon the crown and thereby perceptibly enlarges the volume of its power. The powers of the crown at any given moment comprise, therefore, the sum-total of authority resulting from this pull and haul of forces—of processes building up and others tearing down.

Two further facts about these powers are to be noted. The first is that crown authority, instead of being less than in generations past, is greater, and is still growing. A remarkable aspect of political development throughout the world in the past hundred years has been the expansion of the sphere which government undertakes to occupy, and accordingly of authority wielded and functions performed; and in Britain, as elsewhere, this has meant a steady augmentation of powers and activities of those parts of the government which execute and administer, no less than—indeed, even more than—of the part which legislates. It is one of the paradoxes of the British constitution that the powers of the crown have grown as democracy has spread. A second fact is that while the powers of the crown have been spoken of as mainly executive, they are by no means exclusively such. Even in the United States, where government is organized fundamentally according to the principle of separation of powers, functions of different kinds are not kept altogether in different hands; there are also "checks and balances," so that the president participates in law-making, the Senate acts on nominations to appointive offices, and so on. In Great Britain also, the principle of separation, while finding important (even if less formalized) applications, is by no means adhered to rigidly; and we shall not be surprised to find the crown having to do, in highly important ways, with both legislation and justice as well as with executive and administrative matters. To obtain a clearer idea of what the crown really means in the governmental system of today, we may pass certain of its principal functions in brief review.

THE CROWN AS THE EXECUTIVE: To begin with, the crown is the executive. As such, it sees to the enforcement of all national laws; appoints and commissions (with no right of confirmation or other check by Parliament) substantially all higher executive and administrative officers, all judges, and the officers of the army, navy, and air force; directs the work of administration; has unlimited power to remove officers (except judges) and

discharge employees; conducts the country's foreign relations, and also its dealings with the colonies and dominions; holds supreme command over the armed establishments, and wields the power of pardon and reprieve, subject only to the restriction that no pardon may be granted in cases in which a penalty has been imposed for a civil wrong or by impeachment.

1. DIRECTION OF ADMINISTRATION

Two or three of these executive functions call for a word of comment.[1] First, the matter of directing administration. Precisely as the president of the United States directs national administration in all of its widely ramifying branches, so the composite authority in Britain known as the crown supervises and controls the enforcement of national laws, the collection of national revenues, the expenditure of national funds, and the many other things that have to be done in carrying on the work of the national government throughout the realm. In the United States, Congress concerns itself with administrative matters to such a degree that the president and his chief co-workers, the heads of departments, often find themselves seriously restricted and handicapped. In Britain, the cabinet and the individual ministers who supervise administration are allowed a relatively free hand.[2] In the latter country, furthermore, the chief officers of the crown have a very important function with which, on account of our federal system of government, the president and heads of departments at Washington have extremely little to do. This is the supervision—and at many points control—of the work of local government and administration as carried on by the authorities of counties, boroughs, urban and rural districts, and other areas. In the last half-century or so, this interrelationship of national and local administration has developed on a truly remarkable scale, and the end is not yet.[3] Such analogy as one finds in the United States is supplied by the control over local jurisdictions exercised by the governments of the states—not by the national government.[4]

2. THE CONDUCT OF FOREIGN RELATIONS

The crown also manages the country's foreign relations. All ambassadors, ministers, and consuls accredited to foreign states are appointed in its name, and the diplomatic and consular representatives of such states

[1] Others are dealt with elsewhere, *e g*, in Chap vi below.

[2] See p 256 below

[3] See pp 363–367 below.

[4] Financial and other measures adopted during the depression years after 1929 did, to be sure, bring the government at Washington into somewhat closer relation with the authorities of cities and other local areas But, in general, the observations made above still stand.

are received in the same way. All instructions to official representatives abroad go out as from the crown; all delegates to international congresses and conferences of a diplomatic character are so accredited; foreign negotiations are similarly carried on. War is declared and peace made as if by the king alone. Of course it is futile to declare war unless there is assurance that Parliament will supply the funds requisite for prosecuting it; and either house, or both, may express disapproval of the government's policy or in other ways make its position untenable. But Parliament itself has no direct means of bringing about a war or of bringing a war to an end.[1] When on the fateful fourth of August, 1914, Great Britain cast her lot with France and Belgium in their titanic conflict with Germany, it was the ministers, acting in the name of the crown, who made the decision. Parliament happened to be in session at the time, and the Foreign Secretary explained the diplomatic situation in two extended speeches in the House of Commons, and received impressive evidences of support. But had the ministers chosen to send no ultimatum to Berlin, and to hold to a policy of neutrality, the country would not (at that time, at all events) have become a party to the war.

TREATY-MAKING

From what has been said, it follows that the treaty-making power belongs to the crown; no other authority can negotiate, sign, or ratify any public international agreement. It is true that by their terms treaties sometimes make ratification conditional upon approval by Parliament; also that in these days such approval is regarded as essential in the case of any treaty altering the law of the land (*e.g.*, by reducing customs duties), ceding territory, or pledging payments of money out of the national treasury. Moreover, any treaty of high moral import, such as the Locarno treaty of 1925, is almost certain to be laid before the two houses. People who assumed, however, that submission of the treaty of Versailles in 1919 would usher in a new era in which no treaties would be made without parliamentary assent have found that they were mistaken. Treaties are still, from time to time, negotiated and ratified by action of the crown alone. In deference to the principle of democratic control over foreign relations, Labor leaders have long urged that all international agreements be submitted for parliamentary approval; yet not even the MacDonald governments of 1924 and 1929–31 adhered to such a policy.

[1] F. R. Flournoy, *Parliament and War; The Relation of the British Parliament to the Administration of Foreign Policy in Connection with the Initiation of War* (London, 1927), Chaps i, xii, E. P. Chase, "Parliamentary Control of Foreign Policy in Great Britain," *Amer. Polit. Sci. Rev.*, Nov., 1931.

MANAGEMENT OF COLONIAL AND IMPERIAL AFFAIRS

Another major field of executive control is the colonies. The self-governing dominions—Canada, Australia, New Zealand, and the rest—are subject to but little restraint from either crown or Parliament; yet even here the governor-general is a crown appointee and, under new principles adopted in 1926, is regarded as the immediate representative of the sovereign. The dependent empire of India is administered by agents of the crown, as are also the numerous crown colonies, such as Jamaica and Malta, and likewise protectorates and mandated regions.[1]

THE CROWN AND LEGISLATION.

But the crown is not only an executive, it also shares in the work of legislation. Technically, indeed, all law-making power is vested in the "king in Parliament," which means historically the king acting in conjunction with the two houses, and to this day every statute declares itself to have been enacted "by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same"—even though as a rule the sovereign personally has had little or nothing to do with the matter. In law-making, as in other things, king has yielded to crown.

1. RELATION TO PARLIAMENT

The rôle of the latter is, however, indispensable. In the first place, the crown alone can summon Parliament, prorogue it, dissolve it, and set in motion the processes by which a new House of Commons is elected. In a very real sense, the houses transact business only during the pleasure of the crown. Furthermore, men who are officers of the crown guide and control in practically all that Parliament does. They prepare the king's speech, which sets forth their own program—not his—at the opening of a session; they decide what bills shall be introduced, and when; they lead in explaining and defending these bills, and pilot them through to enactment. In a word, responsibility for whatever is done or not done at Westminster can always be laid chiefly at their door. It is true that these men are also members of Parliament. But the circumstance that gives them their power—aside, at all events, from their position as party leaders—is the fact that they are ministers of the crown. Still further, no bill passed by Parliament gains the character of law, or is of effect in any way, unless and until it has received the royal assent. Here again it is true

[1] R. B. Stewart, "Treaty-Making Procedure in the United Kingdom," *Amer Polit. Sci Rev*, Aug, 1938, A. D. McNair, *The Law of Treaties, British Practice and Opinion* (New York, 1938).

that such assent has not been withheld from a measure in more than two hundred years, and that the ceremony by which it is extended to bills, singly or in batches, is in these days nothing more than a picturesque formality. Assent is, however, a necessity; and it still might actually be refused were it not that, under a cabinet system of government, a ministry finding itself unable to advise final approval of a bill duly passed by Parliament would either step aside in favor of one prepared to take a different attitude or ask for a dissolution and appeal to the electorate.

2. ORDERS-IN-COUNCIL

In one other important way the crown has to do with legislation. Except in the non-self-governing colonies, it no longer makes laws, in the strict sense, by inherent power. Orders-in-council, however, are issued in large numbers by the king-in-council, *i.e.*, the king and privy council—in effect (though not in form or theory) the cabinet; and such orders have equal force with statutory law. Often exercised in pursuance of authority conferred by Parliament, this power of "subordinate legislation" is of steadily increasing importance.[1]

THE CROWN AND JUSTICE

Turning to the domain of justice, we find that whereas in ages past the "king's law" was enforced in the "king's courts," and the sovereign himself did not scruple to intervene and upset the judgments of his tribunals, the crown nowadays plays a relatively minor rôle. It cannot create new courts, or alter the organization or procedure of any existing court, or change the number, tenure, or pay of judges, or substitute different modes of appointment. All these matters are under the jurisdiction of Parliament. Judges are appointed, indeed, by the crown; and all appeals coming from the tribunals of India, the colonies, and the Channel Islands are decided by the crown on the basis of advice tendered by the judicial committee of the privy council, by which authority the appeals are actually considered and decided. But judges can be removed by the crown only at the request of both houses of Parliament; while in office, they may not be interfered with in any way; and the court of last resort for Britain herself is, not the crown, but the House of Lords. By hoary custom, the crown is still spoken of, often proudly, as "the fountain of justice." Obviously it is such, in reality, to only a limited extent.

THE CROWN AS A FOUNTAIN OF HONOR

In a greater degree, the crown is "the fountain of honor"; for it is the ministers (chiefly the prime minister), acting in the crown's name, that single out men for various titles and distinctions, ar-

[1] The subject is dealt with more fully on pp. 111–115 below.

range their names in lists for announcement at New Year's and other suitable occasions, and cause the proper patents or other papers to be issued. Some of these honors, *e.g.*, peerages, have a political import; others, like knighthood, are of social significance only.[1]

THE CROWN AND THE ESTABLISHED CHURCHES

Finally may be mentioned the connections between the crown and the established churches of England and Scotland.[2] Churches other than the Anglican in England and the Presbyterian in Scotland are without state connections, and free to regulate their creeds and rituals as they like. But the two bodies mentioned are built (in different ways) into the fabric of the state, and both crown and Parliament have large powers of control over them. In the case of the Anglican Church, the archbishops and bishops are appointed by the crown, which means in effect by the prime minister; for although it is true that when a vacancy arises a *congé d'élire*, or writ of election, is sent to the canons of the cathedral concerned, it is always accompanied by a "letter missive" designating the person to be chosen. Deans, too, are regularly, and canons frequently, appointed by the crown, although sometimes by the bishop. The "convocations" of Canterbury and York—bicameral legislative bodies composed of clergy of various grades—meet only by license of the crown, and their acts require assent of the crown just as do acts of Parliament. Crown functions in relation to the established Presbyterian Church in Scotland are less important, although not without significance.[3]

HOW CROWN POWERS ARE EXERCISED

Such, in outline, are the powers of the crown today. How are they actually exercised? The answer is, in a variety of ways—some by the cabinet, some by the privy council and its committees, some by this or that board or other group of ministers, or even by a single minister—in almost every way, in fact, except that in which under historical and legal theory they should be exercised, *i.e.*, by the king himself. Three or four chapters will presently be devoted to a description of the executive and administrative machinery through which the crown now functions. The sovereign in person, however, is still far from being a negligible part of the governmental system; and before passing on to the actualities of workaday admin-

[1] A. B Keith, *The King and the Imperial Crown*, Chap xiii.

[2] The Anglican Church was disestablished in Ireland in 1869 and in Wales in 1920. There are now no established churches in those countries.

[3] On the relations of crown, Parliament, and the churches, see A. L. Lowell, *op. cit.*, II, Chaps li–liii, A. B Keith, *The King and the Imperial Crown*, Chap xiv, and H. R. G. Greaves, *The British Constitution* (New York, 1938), Chap. x.

istration we must give some attention to the position which he occupies, both legally and in practical fact, noting the ways in which he helps carry on the business of state, and bringing to view some of the reasons why the great majority of Englishmen agree that the sort of kingship that has been arrived at is useful and ought to be perpetuated.

THE SOVEREIGN: TITLE AND DESCENT

From the time when William and Mary were welcomed from Holland and placed on the throne of the repudiated Stuarts, there has never been any doubt that the tenure of English kings and queens rests entirely upon the will of the nation as expressed in parliamentary enactment. The statute regulating the succession today is the Act of Settlement, dating from 1701[1]. It provided that, in default of heirs of William and of his expected successor, Anne, the crown and all prerogatives appertaining thereto should "be, remain, and continue to the most excellent Princess Sophia, and the heirs of her body, being Protestants." Sophia, a granddaughter of James I, was the widow of the ruler of one of the smaller German states, the electorate of Hanover. There were other heirs whose claims, in the natural order of succession, might have been considered superior to hers. But the Bill of Rights debarred Catholics, and, this being taken into account, she stood first. Sophia narrowly missed becoming queen, because Anne outlived her by a year. But her son mounted the throne, in 1714, as George I, and the dynasty thus installed has reigned uninterruptedly to our own day. The present monarch, George VI, is the tenth in the line. For a century and a quarter, the sovereign of Great Britain was also the ruler of Hanover. At the accession of Queen Victoria in 1837, however, the union ended, because the law of Hanover forbade a woman to ascend the throne of that country. The term "Hanoverian"—and, more specifically, the designation "House of Saxe-Coburg"—which long clung to the dynasty, came, therefore, to have only an historical significance; and in 1917 anti-Teutonic feeling led to the adoption of the unimpeachably English name, House of Windsor.[2] Prior to 1931, there was no question that Parliament

[1] For the text, see R. K. Gooch, *Source Book on the Government of England* (New York, 1939), 126–130

[2] A good deal of interesting history is connected with the sovereign's "style and titles." The royal title as it stands today is (in English translation of the official Latin): "George VI by the Grace of God of Great Britain, Ireland, and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India." The title "Defender of the Faith" dates from the days of Henry VIII; that of "Emperor of India" from a royal proclamation of 1876, and the phrase, "British Dominions beyond the Seas" from a proclamation of 1901. From 1801 to 1927, the general title included the words "of the United Kingdom of Great Britain and Ireland King,"

could, if it chose, repeal that portion of the Act of Settlement which governs the succession and place a different family on the throne, or, for that matter, might abolish kingship altogether. Declaring the crown "the symbol of the free association of the members of the British Commonwealth of Nations," the Statute of Westminster of the year mentioned, however, asserted that it would comport with the nature of this association if any change in the law relating to the succession should thenceforth require the assent of the parliaments of the dominions as well as of the parliament at Westminster; and although this assertion appeared only in the preamble of the act and is not construed as having the full force of law, it is agreed that there would now be grave difficulty if Parliament were to undertake to act in the independent way in which it acted in 1689.

Within the reigning family, the throne descends according to the same principle of primogeniture that formerly governed in the inheritance of land.[1] When a sovereign dies, abdicates, or is deposed, the eldest son—who by birth is Duke of Cornwall and by letters patent is created Prince of Wales and Earl of Chester—inherits; if he is not living, his eldest surviving son succeeds, or, in lieu of a son, the eldest surviving daughter. If no heir is available in this branch of the family, the late sovereign's second son (or a son or daughter thereof) inherits, and so on, elder sons being always preferred to younger, and male heirs to female.[2] Should there be no one within the stipulated degrees of relationship to succeed, Parliament (presumably acting concurrently with the parliaments of the several dominions) would install a new dynasty, and in case of the accession of a minor, or the incapacitation of a reigning sovereign, a regency would be set up in conformity with the terms of a comprehensive Regency Act passed

etc. At the last-mentioned date, however, a royal proclamation, issued in pursuance of an act of Parliament, dropped out the term "United Kingdom" and placed Ireland in the title coordinately with Great Britain and with the overseas dominions This change was made in deference, of course, to the fact that, even though the Act of Union passed in 1800 remained unrepealed, the constitutional changes in Ireland incident to the creation of the Free State had brought the United Kingdom, on its former basis, to an end For the documents, see A B Keith, *Speeches and Documents on the British Dominions, 1918–1931* (Oxford, 1933), 170–171.

[1] Certain changes in the law of property, made in 1925, do not affect kingship or other hereditary titles.

[2] The bachelor king, Edward VIII, abdicating late in 1936, was succeeded by his next oldest brother, the Duke of York, as George VI The latter having no sons, his eldest daughter, Princess Elizabeth, became heir apparent. Since Edward VIII's accession to the throne, early in 1936, there has, of course, been no Prince of Wales On the abdication, see W I. Jennings, "The Abdication and the Constitution," *Polit Quar*, Apr–June, 1937.

in 1937.[1] When the throne is vacated by death or abdication, there is no interregnum; on the contrary, the royal dignity vests immediately in the designated heir, and his formal coronation later on adds in no way to his regal powers, even though taking the coronation oath is a necessary constitutional proceeding.

RELIGIOUS TESTS

No Catholic may inherit, nor anyone marrying a Catholic. This is by virtue of the Bill of Rights; and the Act of Settlement goes on to prescribe that the sovereign shall in all cases "join in communion with the Church of England as by law established." If after his accession he should join in communion with the Church of Rome, profess the Catholic religion, or marry a Catholic, his subjects would be absolved from their allegiance, and the next in line who was a Protestant would succeed. It is required, furthermore, that the sovereign shall at his coronation take an oath personally abjuring the tenets of Catholicism and promising to maintain the established Protestant religion. Until 1910, the phraseology of this oath, dating from an age in which people felt strongly about religious differences, was offensive not only to Catholics but to temperate-minded men of all faiths. An act of Parliament, passed on the eve of the coronation of George V, made it, however, less objectionable; and before George VI was crowned, in 1937, it was further altered, not only to conform to recent changes in Empire organization, but to establish clearly that the pledge to maintain the established Protestant religion applies only in the United Kingdom and not in the overseas dominions. A new sovereign is now required merely to declare that he is a faithful Protestant and that he will, according to the true intent of the enactments which secure the Protestant succession to the throne of the realm, uphold and maintain the said enactments to the best of his powers.[2]

ROYAL IMMUNITIES AND RIGHTS

The sovereign enjoys large personal immunities and privileges. He cannot be called to account for his private conduct in any court of law or by any legal process—not even, as Dicey observes, if he were to shoot the prime minister! He cannot be arrested, his goods cannot be distrained, and as long as a palace remains a royal residence, no sort of judicial proceeding against him can be executed in it. He may own

[1] For the text of this measure, see R. K. Gooch, *Source Book*, 132–137.

[2] P. E. Schramm, *A History of the English Coronation* (Oxford, 1937), Chap. VII, A. B. Keith, *The King and the Imperial Crown*, 20–29. The old and new forms of the oath are printed in parallel columns in *The Times* (London) of Feb. 20, 1937. On more general lines, K. H. Bailey, "The Abdication Legislation in the United Kingdom and the Dominions." *Politica*, Mar., 1938, will be found informing.

land and other property, and may manage and dispose of it precisely as any private citizen. Finally, he is entitled to a generous allowance out of the public treasury for his personal needs and for support of the royal establishment.

THE CIVIL LIST

The present arrangements for keeping the king's purse filled date, in the main, from 1689. Up to that time, there was no regular allocation of funds to the sovereign as distinguished from the government generally. Originally—when to all intents and purposes the king *was* the government—all of the revenues were regarded as his, and he employed them pretty much as he liked, and although this ceased to be the case long before the seventeenth century, most sovereigns—certainly the Stuarts—continued to dip freely into the national funds for personal uses and frequently to thwart the will of Parliament and the nation by this means. Naturally enough, the occasion was seized in 1689, when the monarch's status was being freshly defined all along the line, to put matters on a different basis; and the plan adopted was, as might be surmised, that of allocating to the king a fixed amount of money each year while placing all remaining revenue beyond his reach. At this time, to be sure, more was allowed the king than he was expected to use for personal and court expenses. Out of the £700,000 a year voted to William and Mary, the joint sovereigns were required to pay the salaries of ambassadors and judges, maintain the civil service, and take care of pensions, and from these items chargeable to the king's funds arose the name "Civil List," nowadays often applied to the subsidy itself. For a long time, too, the monarch clung to some of the royal estates and to other sources of personal revenue, giving him still a considerable amount of financial leeway. Under George III and his earlier successors, however, the plan of 1689 was carried to its logical conclusion. The kings gave up most of their lands and other sources of independent income, while Parliament relieved them of item after item on the Civil List, until in 1830 everything was withdrawn except the maintenance of the royal family and the court. The so-called Civil List grant is invariably voted once for all to a new sovereign at the beginning of his reign. The yearly sum allowed Edward VII and George V was £470,000, and Edward VIII and George VI, £410,000, with exemption from income tax.[1]

Viewed from a distance, British kingship is still imposing. The sovereign dwells in a splendid palace, sets the pace in rich and cul-

[1] Cf A B Keith, *The King and the Imperial Crown*, Chap xvi The Civil List Act passed in 1937, after the accession of George VI, is printed in R. K. Gooch, *Source Book*, 138–144

tured social circles, occupies the center of the stage in solemn and magnificent ceremonies, makes and receives stately visits to and from foreign royalty,[1] and seems to have broad powers of appointment, administrative control, military command, law-making, justice, and finance. Examined more closely, however, the king's position is found to afford peculiarly good illustration of the contrast between theory and fact which runs so persistently through the English governmental system. On the social and ceremonial side, the king is no doubt quite as important as appearances indicate; indeed, one has to know England rather well to appreciate how great is his influence in at least the upper levels of society. Of direct and positive control over public affairs—appointments, legislation, military policy, the church, finance, foreign relations—he has, however, virtually none. There was, of course, a time when his personal authority in these great fields was practically absolute. It was certainly so under the Tudors, in the sixteenth century. But the Civil War cut off a great many prerogatives, the Revolution of 1688–89 severed many more, the apathy and weakness of the early Hanoverians cost much, and the drift against royal control in government continued strong, even under the superior monarchs of the last hundred years—until the king now finds himself literally in the position of one who "reigns but does not govern." When we say that the crown appoints public officers, we mean that ministers, who themselves are selected by the king only in form, make the appointments. When the king attends the opening of a parliament and reads the Speech from the Throne, the message is one which has been written by these same ministers. "Government" measures are indeed continually framed and executive acts performed in the name of the crown; but the king may personally know little about them, or even be strongly opposed to them. Two great principles, in short, underlie the entire system: (1) the king may not perform public acts involving the exercise of discretionary power, except on advice of the ministers, evidenced by their countersignature, and (2) for every public act performed by or through them, these ministers are singly and collectively responsible to Parliament. The king can "do no wrong," because the acts done by him or in his name are chargeable to a minister or to the ministry as a whole. This tends, however, to mean that the king can do noth-

THE SOVEREIGN'S POSITION IN THE GOVERNMENT

[1] Naturally, these are fewer now than before the collapse of a number of leading European monarchies at the close of the World War. Visits are exchanged also with the president of the French Republic, and in 1939 George VI became the first British sovereign to visit the United States.

ing, because ministers cannot be expected to shoulder responsibility for acts which they do not themselves originate or approve.[1]

It would be erroneous, however, to conclude that kingship in England is moribund and meaningless, or that the king has no actual influence in the government. Americans are likely to wonder why an institution which seems so completely to have outlived its usefulness has not been abolished; and Englishmen are free to admit that if they did not actually have a royal house they would hardly set about establishing one. Nevertheless, the services rendered by the monarch are considerable, his influence upon the course of public affairs may, indeed, at times be decisive.

SOME THINGS THAT THE SOVEREIGN ACTUALLY DOES

In the first place, the king still personally performs certain definite acts, of which some are so essential that if kingship were to be abolished provision would have to be made for them on some different basis. He receives foreign ambassadors, even if only as a matter of form and in the presence of a minister. He reads the Speech from the Throne, although the Lord Chancellor may substitute for him. He assents to the election of a speaker by the House of Commons, though this, too, may be done by proxy.[2] He may summon a conference of leaders to consider ways of handling a constitutional crisis, though such a step is usually taken only upon advice received.[3] But two important things, at least, he, and he only, can do. One is authorizing a political leader to make up a ministry; the other is assenting to a dissolution of Parliament, entailing a general election. The process of making up a new ministry will be dealt with later, and it will suffice here merely to note that while the party system has developed to a point where normally the sovereign enjoys little or no discretion in selecting a prime minister, he is not legally bound to act upon the advice tendered him in the matter and might conceivably find himself in a position to make a real choice. In any case, no one else can commission a new premier in the form required by established custom. The whole executive authority of the realm

[1] Already in the time of Charles II this situation was well enough understood to call out an oft-cited passage of wit. A courtier once wrote on the royal bedchamber

Here lies our sovereign lord the King
Whose word no man relies on,
He never says a foolish thing
Nor never does a wise one.

"Very true," retorted the king, "because, while my words are my own, my acts are my ministers' "

[2] As assenting to bills passed by Parliament invariably is. See p 233 below.

[3] As, for example, in the case of a conference on the Irish crisis convoked by George V in 1914

falls back temporarily into the king's hands when a ministry resigns. The situation with regard to dissolution is substantially the same. The decision to dissolve is invariably made by the cabinet, which, however, must obtain the king's consent before the plan can be proceeded with; and although consent has not actually been withheld since before the reign of Queen Victoria, it is commonly considered that in a very unusual situation it might be denied (as it sometimes has been by governors-general in the dominions), and even that the sovereign could dismiss a ministry in order to force a dissolution—although in no case has he done so since 1784.[1]

THE SOVEREIGN AS A COUNSELLOR

Of larger practical importance than occasional formal acts of the kind mentioned is the monarch's day-to-day rôle as critic, adviser, and friend. In the oft-quoted phrase of Bagehot, the sovereign has three rights—the right to be consulted, the right to encourage, and the right to warn. "A king of great sense and sagacity," added this writer, "would want no others." [2] Despite the fact that during upwards of two hundred years the sovereign has not attended the meetings of the cabinet, and hence is deprived of opportunity to wield influence directly upon the deliberations of the ministers as a body, the prime minister keeps him fully informed upon the business of state; and cabinet meetings at which important decisions are to be made are frequently preceded by a conference in which the subject in hand is threshed out more or less completely by king and chief minister. Merely because the earlier relation has been reversed, so that now it is the king who advises and the ministry that arrives at decisions, it does not follow that the advisory function is no longer important.

It is, perhaps, superfluous to say that the king's suggestions and advice on matters of public policy need not be acted upon. Ministers will be slow, however, to disregard them. His exalted station alone would give them weight. But there is the further consideration that a sovereign who has been on the throne for some time is likely to have gained a broader knowledge of public affairs than that possessed by most of the ministers. After ten years, Peel once remarked, a king ought to know more about the government than any other man in the country. Even more important is the fact that the sovereign's

[1] See E. M. Sait and D. P. Barrows, *British Politics in Transition* (Yonkers, 1925), 18–22. The king may, of course, advise against a dissolution, as George V is understood to have done in September, 1931, when Prime Minister MacDonald and his associates in the emergency "national" government then in office were trying to decide upon the best course to pursue. See p. 283 below.

[2] *English Constitution* (World Classics ed.), 67.

personal fortunes are less affected by party politics than those of other people, and that accordingly he can usually be depended upon to take a dispassionate and impartial view of matters that stir heated controversy in Parliament and press. He, if anyone, can think in terms of the best interests of the nation as a whole.[1]

KINGSHIP AS A SYMBOL OF IMPERIAL UNITY

But the monarchy serves still other important purposes. It furnishes a leadership for British society which, during the past century at all events, has had a generally good effect in matters of taste, manners, and morals. It personifies the nation, as distinct from any party or class. In an age of lightning change, it lends a comfortable, even if merely psychological, sense of anchorage and stability; "with the king in Buckingham Palace, people sleep the more quietly in their beds." Further, it provides a symbol of imperial unity which most Englishmen agree could not safely be dispensed with. In India, in far-flung crown colonies, in protectorates, dwell multifold millions for whom political authority requires to be expressed in terms of tangible, visible personality. These people can summon up loyalty, and even devotion, to a king or a throne, but hardly to a "constitution," a "government," or other such abstraction. Not only this, but the monarchy is now more than ever necessary as a link with the self-governing dominions, "the last link of Empire that is left," as Prime Minister Baldwin reminded King Edward VIII when discussing with him, in 1936, the question of his marriage. Before the World War, while Canada, Australia, and the rest had their own parliaments and cabinets, the parliament at Westminster was an *imperial* parliament, with power in every square foot of territory over

[1] By all odds the fullest and best discussion of the powers and functions of the sovereign is A. B. Keith, *The King and the Imperial Crown*, especially Chaps v–xv. The influence exerted by successive sovereigns from George III to Victoria is described at length in T. E. May and F. Holland, *Constitutional History of England*, I, Chaps i–ii. Queen Victoria's activities are dealt with in J. A. R. Marriott, *Queen Victoria and Her Ministers* (London, 1933), and F. Hardie, *The Political Influence of Queen Victoria, 1861–1901* (London, 1935). The most satisfactory treatment of Edward VII on similar lines is Sidney Lee's memoir of the king, printed in the *Dictionary of National Biography*, Second Supplement (London and New York, 1912), I, 546–610. The second volume of Mr Lee's *King Edward VII* (London, 1925–27) also contains much interesting information. Full materials for study of the reign of George V are not yet in print, but books of a popular nature which supply some information include D. C. Somervel, *The Reign of George V* (London, 1935), and J. Buchan, *The People's King: George V* (London, 1935). J. A. Farrer, *The Monarchy in Politics* (New York, 1917), is an excellent study of the general subject of the relation of the monarchy to governmental policy in England. Cf. K. Martin, *The Magic of Monarchy* (London, 1937); G. Dennis, *Coronation Commentary* (New York, 1937).

which the British flag flew. Great structural changes, however (to be described in a later chapter [1]), have since brought it about that Parliament is now practically nothing more than the parliament of the United Kingdom, and that, for practical purposes, no constitutional bond of union any longer survives except the crown—which, as we have seen, clearly presupposes a monarch in whose name the "powers of the crown" can be exercised. Break the golden link of empire furnished by royalty, and all that is left of the union of autonomous partners in the Commonwealth of Nations disappears. Hindu, Nigerian, Rhodesian, Bermudan, Gambian, New Zealander, Jamaican, Australian, Canadian, and the rest find in allegiance to the British throne their one common manifestation of imperial unity and feeling.[2]

OTHER CONSIDERATIONS IN THE MONARCHY'S FAVOR

To all of these considerations must be added certain other weighty facts. (1) The continuance of kingship has been no bar to the progressive development of democratic government. If royalty had been found blocking the road to fuller control of public affairs by the people, it is inconceivable that all the forces of tradition could have pulled it through the past three-quarters of a century. (2) The royal establishment does not cost the nation much, considering the returns on the investment; in actual figures, the outlay is only a small fraction of one per cent of the total British budget. (3) The cabinet system, upon which the entire governmental order of Great Britain hinges, has nowhere been proved a workable plan without the presence of some titular head, some dignified and detached figure, whether a king or, as in France, a president with certain of the attributes of kingship,[3] and nothing is clearer than that if monarchy were to be abandoned in Britain, provision would have to be made for a president or other "chief executive," raising all sorts of troublesome questions about his powers and entailing serious pos-

[1] Chap. xv below.

[2] A. B. Keith, *The King and the Imperial Crown*, Chap. xvii. "A great Empire," it has been remarked, "does not live by pageantry alone. Without pageantry, however, it could hardly live at all." *Round Table*, June, 1937, p. 468. The anonymous article from which this quotation is taken, "The King and His Peoples," will be found illuminating.

[3] Interesting experiments with cabinet government in the absence of any titular head of the state (except in the sense in which the "minister-president," or prime minister, served as such) were made in Prussia and other German *Lander* between 1919 and 1933 (see p. 673 below). The rise of the Hitler dictatorship, however, brought them to an end, and the period of their duration was too brief to permit worth-while conclusions to be drawn. The little republic of Estonia formerly had no titular chief executive, but in 1933 acquired a president.

sibilities for the cabinet system itself—to say nothing of the obvious fact that no president or other head of the state, different from a king, could possibly so well serve the purposes of a symbol, at home and throughout the Empire.

LITTLE PRESENT SENTIMENT IN FAVOR OF A REPUBLIC

Thus it comes about that monarchy, although on its face a gross anachronism in a country like Britain, remains impregnably entrenched, being, indeed, like the weather, something that the average Englishman simply takes for granted. At a low ebb in popular respect a hundred years ago, because of a succession of weak or otherwise unworthy sovereigns, it has regained all that it had lost and is today indubitably popular. Such republican talk as one might have heard a couple of generations ago has almost completely died away. Throughout the stormy years 1909–11, when the nation was stirred as it had not been in decades on issues of constitutional reform, every proposal and plan took it for granted that monarchy would remain an integral part of the governmental system. In the general bombardment to which the hereditary House of Lords was subjected, hereditary kingship entirely escaped. In the early years of the World War, some criticism was directed at the royal family because of what proved an ill-founded suspicion that the court was the source of influences antagonistic to republican institutions in allied or other friendly states. But the misunderstanding passed, and the years of feverish republican experiment on the Continent during and after the war left kingship as solidly buttressed in Britain as before. Of greatest significance is the fact that the Labor party, although long on record in favor of the abolition of the House of Lords, has never, as a party, advocated the suppression of British kingship. Individual Labor men have declared themselves republicans in principle, and at a party conference in 1923 a motion was introduced asserting that the royal family was no longer necessary as a part of the British constitution. To bring the issue to a head on the occasion mentioned, a vote was taken on the question, "Is republicanism the policy of the Labor party?"—and the answer given was emphatically in the negative. More recently—during the civil-list debates in the House of Commons at the accession of George VI in 1936—Labor members made it clear that their party is definitely not republican. Equally with Conservatives and Liberals, Laborites consider that as long as the sovereign is content with the sort of position that he occupies today—national and representative, rather than personal and privileged—the country will, and should, con-

tinue, as now, a "crowned republic." [1] The only real dissenters are the Communists.

[1] In their *Constitution for a Socialist Commonwealth of Great Britain* (p. 61)—which, although never officially endorsed by the Labor party, gives a very good clue to Labor views on most subjects—Sidney and Beatrice Webb say: "If we pass from the constitutional theory of the text-books to the facts as we see them today, what we have to note is that the particular function of the British monarch—his duty as king—is not the exercise of governmental powers in any of its aspects, but something quite different, namely, the performance of a whole series of rites and ceremonies which lend the charm of historic continuity to the political institutions of the British race, and which go far, under present conditions, to maintain the bond of union between the races and creeds of the Commonwealth of Nations that still styles itself the British Empire." The authors go on to say, however, that there are some present social disadvantages (tendency to snobbishness, etc) in the existence of monarchy, and that unless they are removed, monarchy will become unpopular and perhaps "very quickly disappear" (p. 109, note); and in the civil-list debates referred to above, Labor representatives declared their party's desire to see the monarchy brought "more closely into line with the general trend of national life" In *The King of England, George V* (Garden City, 1936), the editors of the magazine *Fortune* concluded not only that George V (whose death occurred later in the same year) was Britain's most truly successful and popular monarch in modern times, but that "not since the reign of James I has the British throne been safer than it is today, and never in its history has the British crown been more esteemed" (p. 5). Later on, Edward VIII, long popular as the Prince of Wales, gave promise of bringing kingship into even closer touch with the general mass of the people. His abdication, after less than a year on the throne, was by some thought to have weakened the monarchy's position, but his successor commands the respect, if not the enthusiasm, of the nation, and no real harm appears to have been done Cf K Martin, *The Magic of Monarchy* (New York, 1937); H. Bolitho, *King Edward VIII* (Philadelphia, 1937).

Brief discussions of the position of the sovereign in the governmental system include E P. Chase, "The Position of the English Monarchy Today," *Amer. Polit. Sci Rev*, June, 1935, H. J. Laski, *Parliamentary Government in England* (New York, 1938), Chap. viii, H. R G Greaves, *The British Constitution*, Chap iv, A. L. Lowell, *op. cit.*, I, Chap 1, and S Low, *Governance of England*, Chaps xiv–xv More extended treatment will be found in W. R. Anson, *Law and Custom of the Constitution* (4th ed.), II, Pt i, Chaps 1 and v, and especially in A. B. Keith, *The King and the Imperial Crown*, cited above. M. MacDonagh, *The English King* (New York, 1929), is a readable and informing volume.

CHAPTER IV

The Ministry and the Cabinet

FULL custody of the vast and growing powers of the crown has fallen, as we have observed, to the ministers. To a degree, the resulting duties are discharged by these officials acting singly in their several departments and offices; to some extent, they are performed collectively through the medium of the privy council and the cabinet; in large part, they are carried out with the help of the army of public employees known as the permanent civil service. Four chapters will now be devoted to some description of this widely ramifying apparatus and its workings.

THE PRIVY COUNCIL

The casual observer would hardly fix his attention first upon an agency of such relative obscurity as the privy council. One who looked more closely, however, would find this curiously situated institution not only of rich significance historically, but—after its own manner—of genuine importance today, neither ministry nor cabinet can be understood completely without bringing it into the picture. Lineal descendant of the Great Council of the Norman-Angevin kings, it is the latest form of royal council known to the law, and though long since crowded from the center of the stage by the rise of the cabinet, it is still the instrumentality through which great numbers of cabinet decisions are given legal effect.

MEMBERSHIP

Nowadays, the council consists of some 320 persons. The archbishops of Canterbury and York and the bishop of London belong to it; also higher judges and retired judges, many eminent peers (especially such as have held important administrative posts at home or abroad), a few colonial statesmen, and varying numbers of men of distinction in literature, art, science, law, and other fields of endeavor, upon whom the crown has seen fit to confer membership as a badge of honor. Most councillors become such, however, by virtue of the practice of including in the group all members of every incoming cabinet. Indeed, it is only as a privy councillor that a minister can be required to take the historic oath of secrecy which the deliberative and advisory aspects of the

cabinet's functions are regarded as entailing.[1] Once a privy councillor, a man normally remains such for the rest of his life; so that the body always consists principally of present and past cabinet members. A mark of distinction of all members is the title of Right Honorable.

MEETINGS

The rise of the cabinet system has left the council in a position such that—aside from committee work—its services are largely of a formal character. But this does not mean that they are inconsequential. Except when a new sovereign is to be crowned, or some other solemn ceremony is to be performed, the general body of councillors is never called together. The majority either have never possessed governmental functions or have long since ceased to exercise them; rarely is anyone invited to attend a council meeting who is not an active cabinet member—at all events a minister—and in actual practice not more than four or five members are summoned for the purpose.[2] But the meetings (20 or more a year) are meetings of the "privy council," and all business is transacted in its name—more accurately, in that of "king-in-council," since whatever is done is legally the work of the sovereign and councillors jointly, actually sitting together at Buckingham Palace or elsewhere.[3] The Lord President of the Council is always in attendance, and also the clerk of the council, who issues the summons, and who since 1923 has served also as secretary of the cabinet.

"ORDERS-IN-COUNCIL"

What is there for these meetings to do? As a matter of fact, several things. The council may indeed have no discretion concerning some of them; but at all events they can be done in no other way. It is, for example, at council meetings that all ministers take their oath of office. It is also there that sheriffs are formally appointed. By all odds the most important matter, however, is the issuing of decrees and ordinances designated as "orders-in-council." As will appear later, increasing numbers of administrative rules and regulations are promulgated independently by individual executive departments and other agencies.[4] But certain things are dealt with only through the medium of orders-in-council, and, in general, the more important orders, on whatever subject, are cast in this form. Prominent examples are proclamations summoning, proroguing, and dissolving Parliament; orders relating to the government of the crown colonies;

[1] For the text of this oath, see N. L. Hill and H. W. Stoke, *The Background of European Governments* (New York, 1935), 41–42.

[2] Three suffice for the transaction of business.

[3] It has, however, been made possible in recent years for the council to function, under emergency conditions, without the sovereign's presence.

[4] See pp. 111–115 below.

orders granting royal charters to municipal corporations and other bodies; orders pertaining to the permanent civil service; war-time orders concerning such matters as neutral trade and blockade; and a great variety of orders issued in pursuance of authority conferred in more or less general terms in acts of Parliament dealing with such subjects as health and education. Of late, the total number of orders issued has been around 600 a year; in time of war, it runs considerably higher.

THE COUNCIL NOT A DELIBERATIVE BODY

Be it noted, however, that the privy council is no longer a deliberative or advisory body; indeed, it has not been such since before the days of Queen Anne. Its functions of this character have been absorbed to some extent by the departments, which have a good deal of leeway in determining not only what rules they shall severally promulgate, but what ones they shall carry to the council to be assented to and promulgated as orders. In larger degree, the council's earlier deliberative functions have passed to the cabinet. Upon matters of moment, this body deliberates and frames policy. If by their nature the decisions arrived at require parliamentary action, they are taken thence to Westminster. If, however—as is frequently the case—orders-in-council will suffice, they are taken rather to the privy council. The cabinet decides that orders shall be issued, or that the sovereign shall be advised to act in a certain manner. But it does not, as a cabinet, issue orders; that is the business of the king-in-council, which has, to be sure, yielded its earlier deliberative and advisory functions (it does not even discuss the orders which it is asked to issue), but nevertheless remains the ultimate directing authority.

COUNCIL COMMITTEES

Further evidence that the privy council still has vitality is supplied by the existence of a number of active and important council committees. Foremost among these is the judicial committee, created by statute in 1833, and serving as a great quasi-tribunal which renders final judgment (in the guise of advice to the crown) on all appeals from ecclesiastical courts, admiralty courts, and courts in India, the dominions, and the colonies.[1]

MINISTRY AND CABINET DISTINGUISHED

It is manifest, however, that, whatever may have been true in earlier centuries, we must look beyond the privy council to discover the men and agencies that carry on the public business at the

[1] See pp 391–392 below. Cf C H Tupper, "The Position of the Privy Council," *Jour of Compar Legis. and Internat Law*, Oct, 1921, M. Fitzroy, *The History of the Privy Council* (London, 1928)

present day; and the quest soon brings us to the ministry and the cabinet. The names of these two institutions are sometimes used interchangeably; but they denote parts of the government that are properly to be distinguished from each other, and our first concern must be to see what the difference is. Broadly, the distinction is twofold, *i.e.*, as to (1) composition and (2) functions. The ministry consists of the whole number of crown officials who have seats in Parliament, are responsible to the House of Commons, and hold office subject to the approval of the working majority in that body. It is this relation to Parliament—in other words, the *political* nature of their offices—that distinguishes those crown officials who are to be regarded as ministers from the far greater number who have no such character, forming instead the permanent civil service. Broadly, the ministers are those officers of the crown who have to do with the formulation of policy and the supreme direction of carrying it out. Yet this is not precisely true, because there are ministers who have very little to do with policy, and others who do not administer; which is tantamount to saying that the line which divides ministerial from non-ministerial offices has been drawn by usage, and even accident, not by logic.

COMPOSITION OF THE MINISTRY

Looking over the list of ministers at any given time, one discovers four or five main groups or categories. The first is the heads, actual or nominal, of the principal government departments, *e.g.*, the Secretary of State for Foreign Affairs, the First Lord of the Admiralty, the Chancellor of the Exchequer, the Minister of Health, and the President of the Board of Education. Second, there are other high officers of state, who, however, are not in charge of departments, *e.g.*, the Lord Chancellor, the Lord President of the Council, and the Lord Privy Seal. Third, there are parliamentary under-secretaries. Not all under-secretaries in the departments and offices are parliamentary under-secretaries. There are permanent under-secretaries, who are not ministers, are non-political, and compose the topmost part of the permanent service, unaffected in tenure by the ups and downs of politics and the rise and fall of ministries. The parliamentary under-secretaries (of whom at least one will be found in every important department) are specially useful as spokesmen of their departments in the branch of Parliament in which the department head, in any particular case, does not have a seat.[1] A fourth small but important

[1] British usage, unlike that in Continental countries having cabinet governments, permits a minister to speak only in the house to which he belongs. It is always desirable to have a spokesman also in the other house, and parliamentary under-

group of ministers consists of the government whips in the House of Commons. These are now four in number—a chief whip and three assistant whips. All draw salaries by virtue of holding certain posts in the Treasury. But their actual work is chiefly as whips, and their salaries are justified mainly on the theory that by helping keep a quorum they enable supplies to be voted and the government to be kept running.[1] Finally, a few officers of the royal household, such as the Treasurer and the Vice-Chamberlain, are still regarded as having a political character, and hence are ranked as ministers. Before the World War, the ministry as a rule numbered from 50 to 60. Between 1914 and 1919, the creation of new departments and offices, made necessary by war-time exigencies, raised the total to above 90. Post-war retrenchment and reorganization, however, brought it down again to around 65.

COMPOSITION OF THE CABINET

The cabinet is quite a different matter. It consists at any given time of such members of the ministry as the prime minister (who is head of ministry and cabinet alike) invites into the select circle. All cabinet members are ministers, but not all ministers are cabinet members. One should hasten to add that in deciding upon the composition of his immediate official family the prime minister has considerably less option than the foregoing statement might be taken to imply, because certain of the ministers occupy posts of such functional or historical importance that they can never be left out—except under abnormal circumstances such as led to the creation of the "war cabinet" of 1915 and the MacDonald "national" cabinet of 1931.[2] Such are the Chancellor of the Exchequer, the First Lord of the Admiralty, the ministers of health and labor, the eight "principal secretaries of state,"[3] and (on grounds of prestige) the Lord President of the Council and the Lord Privy Seal. In all, the incumbents of as many as 12 or 14 positions may regularly expect cabinet membership. Beyond this, it is for the prime minister to decide who shall be included, and in doing so he will be influenced by the aptitudes and susceptibilities of the remaining ministers, the importance of a given office

secretaries are appointed with this in view. The Ministers of the Crown Act of 1937 limits certain departments to one parliamentary secretary, certain others to two, and a few others to three.

[1] There are also opposition whips. But they are unpaid, and of course do not belong to the ministry. Whips in the House of Lords do not figure as ministers.

[2] See pp. 67–68, 283 below.

[3] These head the Foreign Office, the Home Office, the War Office, the Dominions Office, the Colonial Office, the India Office, the Ministry for Air, and the Scottish Office.

at the moment, party interests, and even considerations of geographical balance.

INCREASED SIZE

Like the ministry as a whole, the cabinet has never had a fixed number of members; and in both cases there has been a gradual increase, both in absolute numbers and in the proportion of the members drawn from the House of Commons. Eighteenth-century cabinets contained, as a rule, not above seven to nine persons. In the first half of the nineteenth century, the number ran up to 13 or 14; the second cabinet presided over by Lord Salisbury, at its fall in 1892, numbered 17; and most of the time from 1900 to 1914 there were 20 members. The causes of this increase included pressure from ambitious statesmen for admission, the growing necessity of giving representation to varied elements and interests within the dominant party, the multiplication of state activities which called for the creation of new and important departments, and the desire to give every major branch of the administrative system at least one representative. As would readily be surmised, the result was to make the cabinet a somewhat unwieldy body, and from early in the present century there has been not only a steadily growing use of committees, but a tendency toward the emergence of a small inner circle bearing somewhat the same relation to the whole cabinet that the early cabinet itself bore to the overgrown royal council. For years, this trend was viewed with apprehension by people who feared that the concentration of power in the hands of an "inner cabinet" would not be accompanied by a corresponding concentration of responsibility. British and foreign observers, however, agreed that the cabinet had come to be too large for the most effective handling of business.

THE "WAR CABINET" OF 1915-19

The World War furnished opportunity for an interesting experiment with a really small cabinet, although, of course, under quite abnormal circumstances. Experience soon showed that a cabinet of the usual proportions was incapable of the prompt and decisive action demanded by the emergency, and in December, 1916, when Mr. Lloyd George assumed the premiership, a new "war cabinet" was called into being, consisting of only five persons—one Liberal, one Laborite, and three Conservatives.[1] One of the five was burdened with the chancellorship of the exchequer, but the other four were left free to

[1] The cabinet being at that time unknown to the law, no act of Parliament was necessary, nor even a royal proclamation or order-in-council. Mr. Lloyd George merely invited five, and only five, ministers to join the new cabinet circle. For Lloyd George's own account of the steps taken, see his *War Memoirs*, II, 979–1005, III, 1039–1065.

devote all of their time to shaping national policies for the period of crisis; and throughout the remaining war years, this emergency cabinet, increased in 1917 to six members (with an occasional seventh) wielded almost the powers of an autocrat. So long as the nation continued in imminent peril, the arrangement was accepted as unavoidable. Once an armistice had been declared, however, protest against "junto" government broke forth, and in midsummer of 1919 a return to cabinet government on something like the old lines became inevitable.[1]

FUTILE EFFORT TO KEEP THE MEMBERSHIP SMALL

The task of reconstruction, however, raised some difficult questions. How many members should the reorganized cabinet be permitted to have? Should the recently introduced practice of keeping systematic records and making formal public reports be continued?[2] Should the coalition principle be adhered to, or should the old one-party basis be restored? Especially baffling was the problem of numbers. Even if only the ministers who were heads of departments were brought in, there would now be at least 30 members. But pre-war cabinets had never contained more than 22; that number had usually been considered too large; the experiences of 1914–16 had vividly demonstrated the disadvantages of a cabinet of great size, and a "machinery of government" committee set up by the Ministry of Reconstruction was urging that for the proper performance of its functions the cabinet should consist of not more than 12—indeed, preferably 10—members. Mr. Lloyd George's own idea was that only 12 of the most important department heads should be admitted, which would mean a cabinet of the same size as that over which Disraeli presided in 1874–80. He found it impossible, however, to keep within this limit, and as the new cabinet gradually took form in October, 1919, it steadily approached the proportions of pre-war days and finally attained a membership of 20. At no time thereafter did the number fall below 19 except in 1931, when Ramsay MacDonald, organizing his emergency "national" cabinet, reduced it temporarily to 10.[3]

FUNCTIONAL DIFFERENCES RESTATED

In personnel, as we have seen, ministry and cabinet differ in that the latter is an inner circle of the former, comprising, in these days, something like a third of the larger group. Functionally, they differ in that whereas

[1] On the war cabinet, see R. Schuyler, "The British War Cabinet," *Polit. Sci. Quar.*, Sept., 1918, and "The British Cabinet, 1916–1919," *ibid.*, Mar., 1920.

[2] See p. 91 below.

[3] See p. 283 below. The number later rose to 20, and eventually to 23.

ministers as such have duties only as individual officers of administration, each in his particular portfolio or less exalted station, cabinet members have collective obligations, *i.e.*, to hold meetings, to deliberate, to decide upon policy, and in general to "head up" the government. They also play the most important rôle in the leadership of their party. Of course, all cabinet members are also ministers—"cabinet ministers," they are sometimes called, and as such they (or most of them), like the rest, have departments to administer or other ministerial work to do. But the ministry as such never meets; it never deliberates on matters of policy; it is, indeed, misleading to speak of it as a "body" at all. In sum, the cabinet officer deliberates and advises; the privy councillor decrees; and the minister executes. The three activities are easily capable of being distinguished, even though it frequently happens that cabinet officer, privy councillor, and minister are one and the same person.

MINISTRY AND CABINET RESIGN TOGETHER

Before going farther, however, into functions and methods of work, it will be well to take some account of the way in which matters are handled when a cabinet resigns and a new one is to be installed in its stead. At the outset, be it noted that at such a juncture the ministry as a whole also retires. Ministry and cabinet stand or fall together, even though the non-cabinet ministers may personally have had no part in creating the situation which made a change necessary. This is not illogical, because as a rule the shift comes on account of the cabinet losing the confidence of the House of Commons, and the ministers, after all, belong to the party whose leaders are yielding control. They are "political" officers, and they accept their posts in full knowledge that their fortunes are bound up with those of their more important colleagues. Even if a change of party control is not involved, however, the rule applies; although in such a case the greater part of the ministers of all grades are likely to be put back in their old (or similar) positions. To ask how a new cabinet is made up is therefore tantamount to inquiring how a new ministry is brought into existence.

MAKING UP A NEW MINISTRY

The first step is the selection of the prime minister; for he is the head equally of both groups. And this brings us to the official who is by all odds the most powerful and important in the entire government—the only one who is worthy of being compared with the president in our American system. For some time after the cabinet took its place as an accepted part of the machinery of government, its members recognized no superior except the sovereign, whose position was

still such as to leave room for no other leadership. But when, after 1714, the king stopped attending meetings and ceased in other respects to have much to do with the government, the group found itself leaderless, with the result that a sort of presidency developed from within its own membership. In time, what was hardly more than a chairmanship grew into a thoroughgoing leadership—in short, into the prime minister's position as we behold it today. It is commonly considered that the first person who discharged the functions of prime minister in the modern sense was Sir Robert Walpole, first lord of the treasury from 1715 to 1717 and from 1721 to 1742. The term "prime minister" was not yet in general use; Walpole disliked the title and refused to allow himself to be called by it. But that the function, or dignity, truly enough existed, there is an abundance of contemporary evidence to show. By the time of the ministry of the younger Pitt, organized in 1783, the prime minister's place among his colleagues as *primus inter pares* not only was an established fact but was accepted as both inevitable and proper. The essentials of his position may be regarded as substantially complete when, during the later years of George III, it became regular usage that in making up a new ministry the king should simply receive and endorse the list of nominees prepared and presented by the premier.[1]

DESIGNATING THE PRIME MINISTER

We have already said that one of the important acts which the king still performs is the naming of the prime minister; and, truly enough, when a premier goes to Buckingham Palace and places his resignation (along with that of his colleagues) in the king's hands, the sovereign calls another political leader to the Palace and commissions him to make up a ministry—which is tantamount to appointing him prime minister. In earlier days, the king was likely to have some real choice in the matter; he could select as well as appoint. The person designated must, of course, be a party leader who presumably could make up a ministry that would have the confidence and support of a working majority in the House of Commons. He must, as Gladstone put it, be chosen "with the aid drawn from authentic manifestations of public opinion." But there might be two or three, or even half a dozen, eligibles, and the king could make his selection among them. The crystallization of the two-party system, however, coupled with the growth of party machinery, brought it about that each party almost always had a chosen and accepted leader, with the result that

[1] The rise of the prime-ministership is described more fully in J A R. Marriott, *The Mechanism of the Modern State*, II, 71–76. Curiously, no systematic history of the office has ever been written.

when one party went out and the other came in, the sovereign could not do otherwise than call upon the leader of the incoming party, however much his personal preferences might run in a different direction. On certain occasions—notably in 1852 and 1859—Queen Victoria determined by her personal choice which of two or more prominent members of the dominant party should be placed at the head of a new ministry. But she failed in 1880 to prevent Gladstone from becoming premier, although she strongly preferred Lord Hartington or Lord Granville; and never in the past sixty years or more has the sovereign been in a position to make a real choice. The emergence of Labor as a major party has, indeed, created a situation suggesting interesting possibilities. Two occasions have already arisen (in 1924 and 1929) on which no one party had a majority in the House of Commons, and it is conceivable that in such a situation the sovereign might have a chance to decide which of at least two party leaders should be entrusted with the premiership. The task might well prove onerous, and the decision fraught with weighty consequences. Few things are better assured, however, than that, even in the contingency mentioned, advice would reach the king which would mark out the proper path for him to take, and that no monarch in twentieth-century Britain would risk rocking the throne to its foundations by insisting upon a choice of his own as against one that could be made for him.[1]

HOW THE PRIME MINISTER IS ACTUALLY SELECTED

Who, then, actually selects the prime minister? The answer is two-fold: the country, at a general election, brings the party into power; the party singles out the man to be honored—a man, be it noted, who has been chosen party leader (and potential prime minister), not by the rank and file of the party, but by the party members in the House of Commons (along with usually a few other men of prominence in the party) in caucus assembled. If by any chance the party does not have the man in readiness when the call comes, it takes prompt steps to select him. Thus, when in 1894 Gladstone somewhat precipitately retired from office on account of physical

[1] As a matter of practice, the prime minister who is retiring suggests to the king—if, as almost invariably happens, he is invited to do so—the person marked out by the political situation to be successor. This, however, does not prevent the sovereign from "feeling out" the situation directly by talking with other persons involved in it, at all events if (as in 1924) there is some question as to the decision that ought to be reached. On the entirely different conditions confronting the titular head of the state in France (and other Continental countries as well), see pp. 460–461 below. The relations of successive British sovereigns to the formation of ministries is treated historically in A. B. Keith, *The King and the Imperial Crown*, Chap. vi.

infirmity, the Liberals in Parliament canvassed the question of whether the successor should be Sir William Vernon Harcourt or Lord Rosebery. They—more truly the cabinet—chose the latter, and he was forthwith appointed by the queen. He happened to be her personal preference, but that was not the deciding factor. Again, in 1922, when the Lloyd George coalition ministry resigned, Mr Bonar Law accepted the premiership only tentatively until he should have been elected Conservative leader in succession to Mr. Austen Chamberlain, who had refused to break with Mr. Lloyd George [1]

THE TASK OF SELECTING THE OTHER MINISTERS

The premier, duly commissioned, proceeds to draw up a list of ministers, deciding what post each shall occupy, and, in cases where there is room for doubt, whether this man or that shall be invited into the cabinet. Theoretically, he has a free hand. In no direct way does Parliament control either his selection of men or his assignment of them to places, and he can be sure that whatever list he carries to Buckingham Palace will receive the routine—though indispensable—assent of the sovereign.[2] Practically, however, he works under the restraint of numerous precedents and usages, to say nothing of the conditions imposed by the immediate party and public situation. He cannot be guided solely by his personal likes and dislikes, on the contrary, he must consult with this ambitious (perhaps unpleasantly aggressive) party leader, sound out that man for whom no place can be found except of a minor and perhaps otherwise undesirable sort, and plead with A to come in and explain to B why he must stay out, and so at last arrive at a list which will have the requisite qualities of prestige and coherence, even though a product, from first to last, of compromise. It is rarely as difficult to make up a ministry in Britain as it is in France and certain other Continental states, where ministries are always coalitions, and where not only the ministerial group itself, but also the party *bloc* which is to support it, has to be built up out of more or less jealous and discordant elements.[3] In Britain, too, the statesman who is called upon to organize a ministry is apt to have ample time in which to lay his plans, not only because a change of ministries can usually be foreseen with reasonable certainty a good while in advance, but also because the premier-to-be has known all along that whenever the change comes it will be he, and no one else, who will have to handle the situation. Consequently, the making up of a new ministry is, as a rule, a matter

[1] See p 278 below.
[2] No sovereign since Victoria has undertaken to veto names on such a list
[3] See p 462 below.

of only a few hours. Even so, it is a task of much delicacy—"a work," as Disraeli once said, "of great time, great labor, and great responsibility." A prime minister is fortunate who accomplishes it without incurring embarrassment for himself or his party.

MEMBERSHIP IN PARLIAMENT AS A PREREQUISITE

What are some of the rules, traditions, and practical considerations that the makers of ministries find it necessary to take into account? The first is that all ministers must have seats in one or the other of the two houses of Parliament. This does not mean literally that every man[1] appointed to a ministerial post must at the time be actually in Parliament. If there is strong desire to include a person who does not belong to either house—and the reasons may arise either from party expediency or from general public advantage—he may be named, and may enter provisionally upon the discharge of his duties. But unless he can qualify himself with a seat, either by election to the House of Commons or (in cases of special urgency) by being created a peer, he must give way in a brief time.[2] With rare exceptions, therefore, the prime minister selects his men from the existing membership of the two houses.

DISTRIBUTION BETWEEN THE TWO HOUSES OF PARLIAMENT

Every ministry since the early eighteenth century has contained members of both the House of Commons and the House of Lords; even Mr. MacDonald found places for four peers in his Labor ministry of 1924 and for the same number in that of 1929. Indeed, a statute which forbids more than six of the eight "principal secretaries of state" to sit in the House of Commons simultaneously in effect necessitates some distribution between the two, as does also well-established custom under which the Chancellor of the Exchequer regularly belongs to the House of Commons and the Lord Privy Seal, the Lord Chancellor, and the Lord President of the Council to the House of Lords. Beyond this, there is no positive requirement, in either law or custom; although there is a feeling that the Home Secretary should be in the House of Com-

[1] Or woman, because nowadays women occasionally become ministers. Miss Margaret Bondfield was the first such, in the capacity of parliamentary secretary to the Ministry of Labor in the MacDonald government of 1924. In the second MacDonald government, formed in 1929, Miss Bondfield was assigned the post of minister of labor, thus becoming the first woman to sit in a British cabinet.

[2] The matter is usually handled through an arrangement, engineered by the prime minister, by which a loyal party member gives up his seat, thus opening the way for a by-election at which the provisional minister is voted into Parliament by his adopted constituents. The retiring member may be rewarded for his sacrifice by appointment to an office not requiring (indeed, probably incompatible with) membership in Parliament, or even by a peerage.

mons, and also an idea that the Foreign Secretary may most appropriately be in the House of Lords, where he will be less disturbed with embarrassing questions than in the popular chamber. To fill the various posts, the premier must bring together the best men he can secure—not necessarily the ablest, but those who will work together most effectively—with only secondary regard to whether they sit and vote at one end of Westminster Palace or at the other. An important department whose chief sits in the House of Commons is usually represented in the House of Lords by a parliamentary under-secretary, and *vice versa*.

Since the days of Walpole, who was himself a commoner, the premiership has been held approximately half of the time by commoners and half of the time by peers. Lord Rosebery (1894–95) and Lord Salisbury (1895–1902) were, however, the last premiers who sat in the upper house, and it is now generally conceded that enforced absence from the House of Commons, the principal theater of legislative and other activity, imposes an almost fatal handicap. Peerages for retired premiers are deemed fitting, witness the titles conferred on Mr. Balfour and Mr. Asquith. But possession of a peerage militates against attaining the premiership; witness Lord Curzon, who, largely on this account, was passed over in 1923 in favor of Mr. Baldwin. Distribution of other ministers between the two houses has varied greatly, with, however, a steady tendency since the early nineteenth century to an increased proportion of commoners. Within the cabinet, as distinguished from the ministry as a whole, members of the two houses were usually about equally numerous at the middle of the century mentioned; but of late commoners have preponderated, although not decisively (except in Labor cabinets). Peers have usually been more numerous in Conservative than in Liberal cabinets.[1]

THE PRINCIPLE OF PARTY SOLIDARITY

A second general rule or principle which the incoming prime minister must observe in making up both a ministry and a cabinet is that of party solidarity. William III set out to govern with a cabinet in which Whigs and Tories were deliberately intermingled. The plan did not work well, and during his reign and that of Queen Anne it was gradually abandoned in favor of cabinets made up with a view to party homogeneity. To the end of the eighteenth century, men of differing political affiliations were indeed occasionally cabinet colleagues, as

[1] For an interesting analysis of the social and other backgrounds of cabinet ministers, see H. J. Laski, "The Personnel of the English Cabinet, 1801–1924," *Amer. Pol. Sci. Rev.*, Feb., 1928 (reprinted in part in N. L. Hill and H. W. Stoke, *op. cit.*, 46–51).

for example, in the case of the famous "coalition" of Fox and North in 1783. But gradually the conviction took root that in the interest of unity and efficiency the political solidarity of the cabinet group is indispensable. The last occasion (prior to the World War) upon which it was proposed to make up a cabinet from utterly diverse political elements was in 1812. The scheme was abandoned, and from that day to 1915 cabinets were regularly composed, not always exclusively of men identified with a single political party, but at all events of men who were in substantial agreement upon the larger questions of policy, and who expressed willingness to cooperate in carrying out a given program. From 1915 to 1922, the country experimented with coalition governments; and under war-time conditions they were useful, if not indispensable. From 1931 to the present day (1939), furthermore, there has been a "national" government, headed until June, 1935, by Ramsay MacDonald and thereafter by Stanley Baldwin and Neville Chamberlain in succession, and consisting of members drawn from three different parties—not technically a coalition, but certainly bearing strong resemblance to one.[1] War-time coalition left a bad taste in the Englishman's mouth; and only the fact that the "national" government has from the first been, to all intents and purposes, a Conservative government in disguise has rendered it any more palatable. There is still reason to believe that in more normal times it will again, as in generations past, be taken for granted that a new premier will draw his ministerial timber entirely, or practically so, from the resources of his own party. By and large, it remains true that as a recent interpreter of English government remarks, "party-spirit supplies the driving-force of the whole machine." [2]

OTHER CONSIDERATIONS WHICH THE PRIME MINISTER MUST TAKE INTO ACCOUNT

In selecting his colleagues, the prime minister (at all events, when making up a regular party ministry) works under still other practical limitations. One of them is the well-established principle that surviving members of past ministries of the party, in so far as they are in active public life and desirous of appointment, shall be given preferential consideration. There are always a good many of these veterans of the Front Opposition Bench, and as a rule they want to get back into office. At any rate, they would be offended if not given an opportunity to do so when their party returns to power. Then there are the young men of the party who have made reputations for themselves in Par-

[1] See pp. 282–287 below.
[2] R. Muir, *How Britain Is Governed* (3rd ed.), 85.

liament, and consequently have claims to recognition. A certain number of them must be taken care of. After all, the party will need leaders in years to come—men who have had long experience in official life—and its ministerial personnel must be continuously recruited from the ranks. Regard must be had also for geographical considerations; there must be ministers not only from England but from Scotland, North Ireland, and Wales. Different wings of the party must be given representation; disaffected elements must be placated. Social, economic, and religious groupings throughout the nation must be borne in mind. Other things being equal, too, men must be chosen who are good debaters, able platform speakers, and popular with the electorate.[1]

DISTRIBUTION OF POSTS AMONG THE MINISTERS

By no means the smallest difficulty is that of assigning the ministers to individual posts in a reasonably appropriate way, and so that all will be at least moderately satisfied. Until of late, the first question was as to the post which the prime minister himself should occupy. The premiership as such being formerly unrecognized by law, the incumbent could draw a salary only by virtue of occupying an office which was duly recognized and salaried, and such an office—carrying dignity and prestige, but entailing little or no administrative work—was usually found in the first lordship of the treasury. Lord Salisbury's keen interest in international affairs led him, when prime minister in 1887–92, to assume the heavy burden of the Foreign Office, and Ramsay MacDonald occupied the same post during his first premiership (in 1924), partly because of the paramount importance of international affairs at the time, and partly because he had a wider acquaintance abroad and was better versed in diplomatic usage than any of his colleagues. With these exceptions, however, nearly all prime ministers in the past half-century have taken for themselves the treasury post mentioned.[2] Nowadays, it is assumed, if not indeed required by law, that this shall be the practice; because, in prescribing a new salary scale (and incidentally giving the prime-ministership legal recognition), the Ministers of the Crown Act of 1937 stipulated that a salary of £10,000 shall be paid "to the person who is prime minister and first lord of the treasury." So appropriate, and advantageous too, is the prime

[1] The pressure from aspirants is such that Lord Salisbury, when on one occasion engaged in making up a ministry, was heard to say of the principal Conservative club in London that it resembled nothing so much as "the Zoological Gardens at feeding-time"

[2] Gladstone, on two occasions, combined the chancellorship of the exchequer with the prime-ministership, as did also Stanley Baldwin for a few months in 1923.

minister's occupancy of the first lordship that the two positions have thus been definitely tied together.[1]

An incoming prime minister is, however, left with the task of fitting the persons whom he has chosen as colleagues into the places at his disposal, and usually this is not easy. Two or more of them may want, and have equally good claim to, the same position; some may insist upon posts for which the prime minister does not consider them well fitted;[2] some, on the other hand, may be reluctant to take places of specially arduous or hazardous character for which they have been singled out; some, when offered the only thing that is left for them, will refuse in language that will leave the harassed premier, as Gladstone once remarked, "stunned and out of breath." In the expressive simile of Lowell, the prime minister's task is apt to be "like that of constructing a figure out of blocks which are too numerous for the purpose, and which are not of shapes to fit perfectly together."[3] He will have to display much patience and tact, often in the end subordinating his own preferences to the inclinations and susceptibilities of his future colleagues.[4]

FORMAL APPOINTMENT AND ANNOUNCEMENT

The list finally completed, or at least substantially so, the prime minister submits it to the king, by whom, in law, the final appointments are made; and an announcement forthwith appears in the official publicity organ of the government, the *London Gazette*, to the effect that the persons listed have been chosen by the crown to occupy the posts with which their names are bracketed. Formerly, there was no mention of the cabinet; for the cabinet was unknown to the law, and membership in it came merely by informal invitation. The logic of the political situation was, however, usually

[1] See p. 96 below. Under terms of the act mentioned, most heads of departments receive £5,000 a year, though a few only £3,000 or even £2,000. Parliamentary under-secretaries get from £1,200 to £3,000, and the junior lords of the Treasury £1,000 Any minister sitting in the cabinet, however, is entitled to receive £5,000 during such service, if his regular salary is less than that amount, the deficiency is made up so long as he remains a cabinet member. For the text of the Ministers of the Crown Act, see R. K. Gooch, *Source Book*, 146–153; and cf. H. J. Heneman, "Ministers of the Crown and the British Constitution," *Amer. Polit. Sci. Rev*, Oct., 1937.

[2] When, for example, the second Labor government was made up in 1929, Mr. MacDonald did not want Mr. Arthur Henderson at the Foreign Office, but was nevertheless obliged by the latter's insistence to place him there.

[3] *Op. cit.*, I, 57. Cf. M. MacDonagh, *Book of Parliament*, 148–183. On the ministers as amateurs, see pp. 119–121 below.

[4] It is possible to leave a minister "without portfolio," *i e*, without assignment to any specific post. Except in war-time, however, this is rarely done. There were no such ministers between 1915 and 1921.

so plain that enterprising gentlemen of the press could pretty well guess in advance who the members of the cabinet were to be and in what particular office this statesman and that would find his chance to serve the country. Nowadays—under provision of the Ministers of the Crown Act—the ministers who are to sit in the cabinet are duly announced in the *Gazette*.[1]

[1] The process of making up a ministry and cabinet is commented on from various angles in A L Lowell, *op cit*, I, Chap. III, and H Finer, *Theory and Practice of Modern Government*, II, 956-960, and is described at length, with a wealth of historical allusions, in W. I. Jennings, *Cabinet Government* (New York, 1936), Chaps II–III Much interesting information will be found in C Bigham, *The Prime Ministers of Britain, 1721–1921* (London, 1922) A complete list of prime ministers since 1721 is printed in *Const Year Book* (1939), also of ministries since 1824, with the principal members of each.

CHAPTER V

The Cabinet at Work

WRITERS on the British constitution have employed many colorful phrases to suggest the importance of the cabinet. Bagehot terms it "the hyphen that joins, the buckle that binds, the executive and legislative departments together"; Lowell calls it "the keystone of the political arch"; Sir John Marriott refers to it as "the pivot round which the whole political machinery revolves"; Ramsay Muir speaks of it as "the steering-wheel of the ship of state." To be sure, Gladstone found the center of the British system—"the solar orb round which the other bodies revolve"—in the House of Commons; Sidney Low presents the cabinet, as from the legal point of view, "only a committee of the privy council, and its members merely 'His Majesty's servants' "; and Sidney and Beatrice Webb describe the government as being carried on, in fact, "not by the cabinet, nor even by the individual ministers, but by the civil service." Nevertheless, as we shall see, the cabinet has gained sharply at the expense of the House of Commons since Gladstone wrote;[1] and notwithstanding that the civil service nowadays receives more nearly the recognition that is its due, the central position in the political picture is still held by the group of cabinet ministers.

THE CABINET'S IMPORTANCE

To start with, the cabinet is, to all intents and purposes, the working executive. To be sure, the day-to-day enforcement of law is directed, and other duties of an executive nature are performed, by the ministers in charge of the various departments. To be sure, too, the decisions of the cabinet as such will in many cases become effective only when cast in the form of orders-in-council, or even of statutes. Ministers, in their individual capacity, may, however, be guided in what they do by what are in effect cabinet instructions, and orders-in-council are, as we have seen, only cabinet decisions given legal form by the king-in-council, which, as we also have seen, is nominally a superior authority but actually, as it operates, a group of cabinet officers meeting in the presence of the sovereign

THE CABINET AS WORKING EXECUTIVE

[1] See pp. 254–256 below.

and, in a purely routine way, putting the final stamp of authority upon what the cabinet as a whole has "advised." Historically and legally, the executive may, truly enough, be the "crown." But the chief instrumentality through which the crown operates in framing national policy and carrying it into effect is the cabinet ministers.

THE CABINET AND LEGISLATION

A hundred years ago, the cabinet, indeed, drew its importance mainly from its executive functions. Since 1832, however, it has come to have so much to do with legislation that a careful observer has been moved to remark, without a great deal of exaggeration, that it is the cabinet that legislates, with the advice and consent of Parliament. The mere fact that cabinet members have seats in one or the other of the two houses is, of itself, the least important aspect of the matter. The main consideration is that—as will be explained more fully when we come to deal with the processes of legislation—the cabinet ministers guide and control the work of Parliament, in both branches, in a fashion with which there is nothing to compare in the United States (save in very unusual situations such as that existing during the first year of Franklin D. Roosevelt's presidency), and in a degree quite unmatched even in France, Belgium, and other countries having cabinet systems of government They prepare the Speech from the Throne in which the condition of national affairs is reviewed and a program of legislation set forth at the opening of every parliamentary session, they formulate, introduce, explain, and urge the adoption of legislative measures upon all manner of subjects; even though bills may be presented in both houses by non-ministerial members, measures of a controversial nature, or of importance for other reason, rarely receive serious attention unless they have originated with, or at all events have the active support of, the cabinet. For weeks at a stretch, the cabinet demands, and is allowed, practically all of the time of the House of Commons for the consideration of the measures in which it is interested. In short, the cabinet ministers make decisions and formulate policies on all weighty matters requiring legislative attention, and ask of Parliament only that it take whatever action is requisite to make these decisions or policies effective. So essential is it that the ministers have the confidence and support of the popular legislative branch that normally any serious rebuff or check at its hands leads forthwith to a readjustment designed to restore harmony, *i.e.*, a change of ministry, or even the election of a new House of Commons.

The cabinet has sometimes been described as a committee of Parliament—a committee chosen, as Bagehot bluntly puts it, to rule the

nation. It is, of course, not a committee in any ordinary sense. Parliament does not appoint it; and, far from having bills referred to it like a committee of the usual sort, it is itself the originator of most bills that assume much public importance. Nevertheless, its members are drawn from the membership of Parliament, and they constitute a sort of parliamentary inner group or circle recognized and accepted as an agency of leadership—endowed, it is true, with large initiative, but yet deriving its power primarily from its parliamentary setting or connecton. Allowing for exceptional intervals such as the eclipse of the bi-party system has produced in the past decade, the basic feature of the system is rule by party majority; and within the party majority the power that governs—in party matters and in public affairs alike—is the group of leaders forming the cabinet. As Lowell puts it, the governmental machinery "is one of wheels within wheels; the outside ring consisting of the party that has a majority in the House of Commons; the next ring being the ministry, which contains the men who are most active within that party; and the smallest of all being the cabinet, containing the real leaders or chiefs. By this means is secured that unity of party action which depends upon placing the directing power in the hands of a body small enough to agree, and influential enough to control." [1]

"WHEELS WITHIN WHEELS"

Under what conditions, and by what methods, does the cabinet perform its multifarious tasks? First of all, it must operate at all times in conformity with the hard-won rule of ministerial responsibility. With a few formal and negligible exceptions, every act of the crown must be countersigned by at least one minister, who thereby assumes responsibility for it. But what does it mean to be "responsible"? Two things, chiefly: (1) liability before a court of law in case an act is alleged to be illegal, and (2) accountability to the House of Commons—on political, as distinguished from juridical, lines—for the reasonableness and desirability of what is done. The first form of responsibility is a matter of law—unwritten, indeed, but nevertheless law; the second is one of the great conventions which has made the constitutional system what it is. From the principle that ministers are answerable to the popular branch of Parliament for every policy that they embark upon, and for every action that they take, has flowed the cabinet, or parliamen-

THE CABINET AND THE PRINCIPLE OF MINISTERIAL RESPONSIBILITY

[1] *Government of England*, I, 56. The place of the cabinet in the governmental system as a whole, and especially the causes and results of the cabinet's greatly increased powers in recent times, will be described more fully in Chap. xiv below.

tary, system, which, in turn, is Britain's primary contribution to modern political practice.

RESPONSIBILITY ORIGINALLY INDIVIDUAL

Before the days of the cabinet system, ministerial responsibility was individual rather than collective, and where it involves only legal accountability for acts performed, it is still so. a minister acting in an illegal manner may be proceeded against at law singly and subjected to penalty. For a good while after the cabinet became a recognized institution, responsibility to the House of Commons for policies and acts involving questions only of policy, and not of legality, was also essentially individual In the old days, ministers had sometimes been impeached and removed from office by parliamentary action because of their policies, even though admittedly legal; that, indeed, was the only way of getting rid of them if the king refused to dismiss them. In the eighteenth century, impeachment became unnecessary and obsolete, because the new relation of ministers and Parliament after 1689 presumed a continuous responsibility on the part of the former, grounded upon a sort of "gentlemen's agreement" to the effect that if a minister could not keep the respect and support of a House of Commons majority, he should have the good sense and common decency to resign. But even this responsibility was, for a good while, as has been said, only a personal, or individual, matter, a minister might incur opposition compelling him to vacate his post without necessarily dragging down the others.

BUT BECOMES COLLECTIVE

Under these conditions, there was, to be sure, a cabinet, but no "cabinet system"; for the essence of a cabinet system is a solidarity, a "common front," of the cabinet (indeed, of the entire ministry in a system like the English in which cabinet and ministry are not co-extensive in personnel) such that the members pursue an integrated policy for which *all* accept responsibility and on which they stand or fall together. It was in the last quarter of the eighteenth century that Britain arrived at this final stage, the first ministry to bow as a body before a hostile House of Commons being that of Lord North in 1782. From this period onward, ministerial responsibility was not only individual but also collective, and nearly three-quarters of a century have now passed since a cabinet minister retired singly because of a hostile parliamentary vote. This does not mean, of course, that no minister ever leaves office unaccompanied because of being under fire. In the first place, a minister may be dismissed by the king, on request of the prime minister, because of official indiscretion or misconduct in 1922, Mr. E. S Montague was dismissed as secretary

for India for making public an important state paper without consulting his colleagues, and in 1936 Colonial Secretary J. H. Thomas found it necessary to resign because of having betrayed budget secrets. In the second place, a minister may have incurred so much public or parliamentary displeasure (or both) that he would very likely be visited with formal censure by the Commons if he did not forestall such action by retiring: in 1935, Foreign Secretary Hoare resigned because of nation-wide disapproval of a proposal made by himself and Premier Laval of France with a view to ending the Italo-Ethiopian war. But the point is that when a minister falls into such a predicament, he is not left by his colleagues merely to sink or swim while they look on from the distant shore. Either they jump in and push him under, or they haul him into their boat and accept his fate as their own; in other words, they repudiate him and throw him out before his troubles drag them down, *or* they rally to his support and make common cause with him. The latter course is pursued far more frequently than the former—so much so that cabinet solidarity, and therefore collective responsibility, may normally be taken for granted. Behind closed doors, cabinet members may make wry faces because of men and measures that they are called upon to support in public. But only rarely does the cabinet seek, before the House of Commons and the world, to disclaim responsibility for what is done by any of its members in its (nominally, the crown's) name.

MODES OF ENFORCING RESPONSIBILITY

There are at least four ways in which a ruling majority in the House of Commons may manifest its displeasure with a cabinet, and thus bring to a head the question of its continuance in office. It may pass a simple vote of "want of confidence," thereby expressing disapproval of general policy. It may pass a vote of censure, criticizing the cabinet, or some member thereof, for some specific act. It may defeat a measure which the cabinet has sponsored and refuses to abandon. Or it may pass a measure but amend it in ways that the ministers are unwilling to accept. The cabinet is not obliged to pay any attention to a hostile vote in the House of Lords; but when any one of the four forms of action enumerated is taken in the popular chamber, the prime minister and his colleagues must normally do one of two things: resign or appeal to the country. If it is clear that the cabinet has lost the support, not only of Parliament, but of the electorate, the only honorable course for the ministers is to resign. If, on the other hand, there is doubt as to whether the parliamentary majority really represents the country upon the matter at issue, the ministers may very properly "advise," *i.e.*, request, the sov-

ereign to dissolve Parliament, which, of course, brings on a general election. In such a situation the ministers tentatively continue in office If the election yields a majority prepared to support them, the ministry is given a new lease on life. If, on the other hand, the new parliamentary majority is hostile, no course is open to the ministers save to retire, either immediately or upon suffering an actual defeat (generally on the reply to the Speech from the Throne) when the new parliament begins to work. It is usual in such cases for the ministers to hand over their seals of office as soon after the polling as they can put business in shape for their successors. The first Conservative government of Stanley Baldwin, however, defeated in the elections of 1923, patriotically tided over the exceptionally unsettled interval while the victors were deciding upon their course of action and allowed itself to be ousted by a technical defeat after Parliament met.

It is hardly necessary to say that a cabinet may save itself by abandoning a bill the defeat or emasculation of which is in certain prospect, or by accepting amendments offered from the floor; also that some ministries are more "thick-skinned" than others, *i.e.*, more disposed to bear up under rebuffs without making them grounds for resignation or a dissolution—a characteristic displayed notably by the Lloyd George coalition government during the two or three years preceding its collapse in 1922. Indeed, a survey of the political history of recent decades would show that cabinets rarely resign without giving themselves the benefit of the chance that goes with a national election. They like to think that the country is behind them even though the House of Commons is not, and sometimes the outcome shows that they were right.[1]

THE CABINET AS A WORKING BODY

Turning to the way in which the cabinet carries on its work, three main features appear, *i.e.*, the leadership of the prime minister, the use of committees, and the activities of the secretariat. How the prime minister comes by his office and how he selects his colleagues have been described above. Something further, however, may be said about his duties, and especially his relations with the other ministers, the sovereign, and Parliament.

In his relation to the ministers generally, the prime minister is often described by the phrase *primus inter pares*, the intention being to em-

[1] A different twist is given the situation when a cabinet that has the confidence of the House brings about a dissolution in order to take a sort of referendum on a policy or measure on which it wants a clear mandate from the people This is not often done, and the experience of Mr Baldwin's government in 1923 shows that to take such a step may mean to court disaster.

phasize that, notwithstanding greater importance and unique functions, he is, after all, not a different order of political being, like the German chancellor (under both Empire and Republic),[1] but only one of a group, fundamentally on a footing with the others. Formerly, there was, in the eye of the law, no *office* of prime minister at all; none had ever been *created*, and no salary was attached, the person who bore the title received pay from the state only by virtue of the secretaryship or similar post which he held. To be sure, in 1878 the term "prime minister" made its appearance in a public document—in the opening clause of the Treaty of Berlin, in which Lord Beaconsfield was referred to as "First Lord of Her Majesty's Treasury, Prime Minister of England"; and for social purposes, the prime minister as such was given definite rank by an act of 1906 fixing the order of precedence in state ceremonials and assigning him the position of fourth subject of the realm. Even yet, however, his powers and functions are nowhere legally defined, being instead merely recognized and accepted for what they are after two centuries of historical development. From at least the time when the Ministers of the Crown Act of 1937 definitely assigned him a salary (though still only in conjunction with the first lordship of the treasury), he may be regarded as having been on a positive legal footing. But it still is true, as Gladstone once remarked,[2] that nowhere in the world is there a man who has so much power with so little to show for it in the way of formal prerogatives.[3]

1. THE PRIME MINISTER.

"First among equals" the prime minister undoubtedly is. Rather better is Sir William Vernon Harcourt's phrase, *inter stellas luna minores*, or John Morley's expressive figure, "the keystone of the cabinet arch." For, within ministry and cabinet alike, the premier is the key man, even if not always the outstanding personality.[4] He has put the

A. SUPERIORITY OVER OTHER MINISTERS

[1] See pp 616–617, 685–688 below.

[2] *Gleanings of Past Years* (New York, 1889), I, 244.

[3] Outside of Continental dictatorships, at all events.

[4] The concept of the prime minister as merely *primus inter pares*—after all, a very mild phrase—has so dominated the older treatises on English government that the official's real power and importance have been very inadequately appreciated. A corrective is applied in Ramsay Muir, *How Britain Is Governed* (rev ed.), Chap. iii. The phrase *primus inter pares*, Mr. Muir asserts, "is nonsense, as applied to a potentate who appoints and can dismiss his colleagues. He [the prime minister] is, in fact, though not in law, the working head of the state, endowed with such a plenitude of power as no other constitutional ruler in the world possesses, not even the president of the United States" (p 83). A dramatic illustration of the unique powers of the prime minister was afforded by Mr. Baldwin's handling of the situation culminating in the abdication of Edward VIII in 1936. The cabinet as a whole

other ministers where they are. He exercises a general surveillance and coordinating influence over their work. He presides at cabinet meetings, and counsels continually with individual members, encouraging, admonishing, advising, and instructing. He irons out difficulties arising between ministers or departments. If necessary, he can require of his colleagues that they accept his views, with the alternative of his resignation or theirs;[1] for it is tactically essential that the cabinet, however divided in its opinions when behind closed doors, shall present a solid front to Parliament and the world.[2] Indeed, he can, and as we have seen occasionally does, request and secure from the sovereign the removal of a minister for insubordination or indiscretion. He is, and is expected to be, the leader of the ministerial group; as its chief spokesman, he will have to bear the brunt of attacks made upon it; and it is logical enough that his authority shall be disciplinary as well as merely moral. It goes without saying, however, that in all this he must not be overbearing, or harsh, or unfair, or tactless. His government will at best have enough obstacles to overcome; its solidarity must not be imperilled or its morale lowered by grudges or injured feelings within its ranks.[3]

was consulted only casually, and sometimes only after important decisions had been reached For a full account, see W. I. Jennings, "The Abdication of Edward VIII," *Politica*, Mar., 1937.

[1] A good illustration is afforded by the circumstances of the break-up of the Labor government in August, 1931. See p. 282 below. On this occasion, Prime Minister MacDonald, after conferring with the king, demanded the resignation of *all* the ministers

[2] There have been instances in which a cabinet member has resigned rather than accept a policy advocated or supported by the prime minister. A recent case of the kind was the resignation of Alfred Duff Cooper as First Lord of the Admiralty in 1938 in protest against Prime Minister Neville Chamberlain's foreign policy Lord Palmerston, when prime minister, once said that his desk was full of Mr Gladstone's resignations, though as a matter of fact the difficulties were always ironed out In 1932, Mr. Baldwin's "national" government tried the experiment of permitting three unconverted free-trade members to oppose the government's protective tariff policy in the House of Commons After a few months, the plan ended, however, in the resignation of these members See N. L Hill and H. W Stoke, *op cit*, 58–64 Sooner or later, a minister who finds himself unwilling to share responsibility for *everything* with which the cabinet is identified finds also no course open to him except to resign

[3] The question of the extent to which the prime minister may impose his personal will upon his colleagues as a group is more or less an open one, although the general principle that he shall not override their wishes is clear. There have been instances in which the prime minister publicly announced an intention to ask for a dissolution of Parliament when the cabinet was not agreed upon the plan. The most familiar was Mr. Baldwin's historic announcement at Plymouth in 1923 Most precedents indicate, however, that such a decision must be reached by the cabinet as a whole and not by the premier alone On two occasions, Gladstone, when prime minister, wanted a dissolution, but the cabinet was opposed, and no dissolution took place.

B. RELATIONS WITH THE SOVEREIGN

The prime minister is the principal—and at times the only—channel of communication between the cabinet and the sovereign. To be sure, every minister who is head of a department has a legal right of access to the sovereign; and on more than one occasion Queen Victoria had dealings with individual ministers behind the back of a chief (notably Gladstone) whom she disliked. Nowadays, this latter practice—regarded, indeed, as unconstitutional, except as relating to matters of a purely departmental character—has been largely discontinued, and with rare exceptions the right of individual access is waived, so far as important public business is concerned, in favor of the prime minister, to the end that he may be able to put government affairs before the sovereign in a consistent and systematic manner. Frequent conferences at Buckingham Palace and elsewhere give the prime minister opportunity to report on the progress of discussion in the cabinet and of debate in Parliament; and in busy periods these conversations are supplemented by daily letters.

C. POSITION IN PARLIAMENT

In the branch of Parliament of which he is a member, the prime minister also represents the cabinet as a whole in a sense which is not true of any of his colleagues. He is looked to for the most authoritative statements and explanations of the government's policy; he speaks on most important bills; and at crucial stages he commonly bears the brunt of debate from the government benches. A prime minister who belongs to the House of Commons is, of course, more advantageously situated than one who sits in the House of Lords. The latter must trust a lieutenant to represent him and carry out his instructions in the place where the great legislative battles are fought; and this lieutenant, the government leader in the House, tends strongly to draw into his own hands a part of the authority belonging to the cabinet's nominal head. During Lord Salisbury's last premiership, this difficulty was largely obviated by the fact that the government leader in the lower chamber was the prime minister's own nephew, Mr. Balfour. But, as Gladstone once wrote, "the overweight of the House of Commons is apt, other things being equal, to bring its leader inconveniently near in power to a prime minister who is a peer." It is, indeed, exceedingly doubtful whether there will ever again be a prime minister without a seat in the popular branch.

D. HEAVY BURDENS

It goes without saying that the prime minister is hard-worked and always pressed for time. He must go through innumerable papers, supervise endless correspondence, receive a steady stream of callers on more or less important public business, confer with individual ministers, visit and submit

reports to the sovereign, hold cabinet meetings, and—as if that were not enough—spend much of almost every day when Parliament is in session either on the Treasury Bench (assuming that he is a member of the House of Commons) or in his private room behind the speaker's chair, ever ready to answer questions, to plunge into debate in defense of the government's policy, and to decide points of tactical procedure put up to him by his lieutenants. Social demands have to be met also; and groups of constituents will occasionally expect to be taken to the public galleries or invited to tea on the Terrace overlooking the Thames. Small wonder that in 1924 the broad shoulders of Ramsay MacDonald drooped under the double load of the premiership and the secretaryship for foreign affairs, or that Gladstone was moved to remark, some 50 years ago, that these two offices cannot be combined successfully!

Few, if any, positions in the world carry with them greater power than the British prime-ministership. This does not mean, however, that all British prime ministers have been, in practice, equally powerful; on the contrary, like presidents of the United States, the premiers have differed widely in both power and (what comes to pretty much the same thing) influence. In the first place, some have been strong, dominating personalities—men of the type of the Pitts, Peel, Disraeli, Gladstone, Lloyd George—while others have been mediocrities, such as North, Newcastle, Liverpool, and Campbell-Bannerman. In the second place, those who, like Salisbury and MacDonald, have tried to carry the premiership along with another important office have been unable to realize the possibilities of either post to the full. Furthermore, the growth of the number of departments and ministerial offices—the sheer spreading out of the field covered by the government—has so augmented the task of supervision as to make it increasingly difficult for the prime minister to wield control as in earlier and simpler days. Finally, as Palmerston once lamented, the premier's practical power and importance in his government inevitably tend to be diminished when the principal offices are filled by conspicuously energetic and able men. On the whole, however, the office of prime minister is, as a former incumbent has remarked, "what its holder chooses to make it."[1]

[1] Lord Oxford and Asquith, *Fifty Years of Parliament* (Boston, 1926), II, 185. For an interesting summary of the characteristics of the 40 British prime ministers from Walpole to Neville Chamberlain, see W. B. Munro, *Governments of Europe* (3rd ed.), 85–88, and for the best full treatment of the subject, C. Bigham, *The Prime Ministers of Britain, 1721–1921* (London, 1922). On the prime ministership in general, see W. I. Jennings, *Cabinet Government*, Chap. VIII, and cf. S. Herbert, "The Premiership and the Presidency," *Economica*, June, 1926.

2. CABINET COMMITTEES

Like most bodies of even 20 to 25 people, the cabinet finds use for committees. There is no fixed and regular committee system; but numerous special committees, *e.g.*, on education, public health, etc., are set up from time to time as need arises, and at least one such committee —on "home affairs," which in practice means recommending government business for a session and considering the technical, or drafting, aspects of all government bills—is referred to as "permanent." Committees usually consist of three or four cabinet members most interested in, or best qualified with respect to, a given field of activity; their sittings, particularly in the case of the home affairs committee, may be attended by ministers who are not in the cabinet; they are expected to study whatever matters are referred to them, with the aid of departmental experts, and perhaps of non-official advisers as well; and the recommendations which they make, especially if offered with practically unanimous backing, are very likely to be adopted by a preoccupied and less informed cabinet. As time goes on, the use of committees, once deplored as tending to weaken collective counsel, will probably be extended.[1]

3. CABINET MEETINGS

When Parliament is in session, regular cabinet meetings are held once or twice a week, during morning and early afternoon hours so as not to conflict with the sittings of the houses. Special meetings may be called by the prime minister; indeed, in tense periods the members are likely to be brought together once a day or even oftener. When, however, Parliament has been prorogued, meetings are at lengthier intervals, at the prime minister's discretion.[2] In earlier days there was no regular meeting place. "I see them [the cabinet ministers],"

[1] The Committee of Imperial Defense, of which one frequently hears, is not technically a committee of the cabinet, but functions substantially as such. Embracing the prime minister as *ex officio* chairman and such other persons as he may designate—usually the political and technical heads of the several defense services, the Chancellor of the Exchequer, and the secretaries of state for foreign affairs, the colonies, and India, and also representatives of the dominions as occasion requires—it and its subcommittees investigate, report, and recommend on all defense questions. See W. I. Jennings, *Cabinet Government*, 240–246. From 1925 to 1930, a committee on scientific and civil research, consisting of the prime minister and such other persons as he chose to designate, was in a generally similar position, and the same is true of the Economic Advisory Council which replaced it. See p. 110, note 2, below.

[2] In 1920, there were 82 cabinet meetings, and in 1921, 93. The number was somewhat smaller in succeeding years, *e.g.*, in the year ended March 31, 1925, when it was 62. In addition, there were in the last-mentioned period 159 meetings of cabinet committees and 154 meetings of the Committee of Imperial Defense and its subcommittees.

wrote Algernon West, "meeting everywhere."[1] Nowadays, the meetings are most commonly held at the prime minister's official residence, No. 10 Downing Street, although sometimes in his room back of the speaker's chair in the House of Commons, and occasionally at the Foreign Office or, indeed, any other convenient place. The proceedings are decidedly informal. The prime minister presides and of course guides the deliberations, even to determining when they shall be brought to a close. But there are no rules of order, there is no fixed quorum, and speeches give way to discussion of a conversational nature in which everybody has a chance to participate. Attempt is made to get decisions, not by formal votes (though such votes are sometimes taken), but by the give-and-take of debate which results in unanimous conclusions. In point of fact, as previously observed, a good many decisions are reached by means of private conferences among principal members rather than through discussions in general meetings.

PRIVACY OF PROCEEDINGS

Nobody has better reason than a group of cabinet ministers to know that in unity there is strength. At all events, they are well enough aware that, exposed as they are to a steady flow of inquiry and criticism in the House of Commons, any lack of harmony, or even the appearance of it, will soon rise to plague them. Two main features or devices help the group to present a solid front. One—already considered—is the leadership and disciplinary authority of the prime minister. The other is the secrecy of proceedings. No one needs to be told that a group of men brought together to agree upon and carry out a common policy in behalf of a large and varied constituency will be more likely to succeed if their inevitable clashes of opinion are not published to the world. It would not be expected that such a body as the British cabinet would deliberate in public, no group of men charged with duties of similarly delicate and solemn character does so. But not only are reporters and other outsiders (except secretarial employees) entirely excluded, the subjects discussed, the opinions voiced, and the conclusions arrived at are divulged only in so far, and at such time, as is deemed expedient. In other words, the cabinet not only deliberates privately, but it throws a veil of secrecy over its proceedings. Following a cabinet meeting, the prime minister—or, in rare instances, some other authorized spokesman—may give the press some indication of what has happened, or may make statements in Parliament from which a good

[1] "No 10, Downing Street," *Cornhill Magazine*, Jan., 1904

deal can be deduced. Indeed, much may be told freely. But on the other hand, the veil may not be lifted at all; and in any event remarks and situations that would tend to disclose serious differences of opinion will almost always be withheld. One is obliged to add, however, that some cabinet ministers are less discreet in their conversation than others, and that, in one way or another, enterprising reporters usually contrive to know pretty well what is going on.[1]

4. THE CABINET SECRETARIAT—RECORDS AND AGENDA

There is, further, the matter of cabinet records and agenda—which brings us to an important piece of subsidiary machinery dating only from within the past twenty-five years, *i.e.*, the cabinet secretariat. In the early nineteenth century, it was not uncommon for brief memoranda, or minutes, of cabinet proceedings to be written out and placed on file, at least for the time being. The practice, however, died out, and for a long time no clerk was allowed to be present in the meetings and no records were kept. For knowledge of what had been done, the ministers had to rely upon their own or their colleagues' memories, supplemented at times by privately kept notes. It was, indeed—so Mr. Asquith stated in the House of Commons in 1916—"the inflexible, unwritten rule of the cabinet that no member should take any note or record of the proceedings except the prime minister"; and he went on to explain that the prime minister did so only "for the purpose . . . of sending his letter to the king."

Mr. Asquith's statement was by way of interpolation in a speech of his recent successor in the prime-ministership, Mr. Lloyd George; and what Mr. Lloyd George was divulging was that, along with the creation of the war cabinet, it had been decided to introduce arrangements for keeping a complete official record of all cabinet decisions. The need for something of the sort had been felt before. "The cabi-

[1] E. M. Sait and D. P. Barrows, *British Politics in Transition*, 51–52. A great deal of information about what has taken place in cabinet meetings eventually becomes available through autobiographies and memoirs published by former cabinet members, often, however, impaired in value by the haziness or untrustworthiness of the reminiscences upon which the writer relies. Noteworthy examples are Gladstone's *Gleanings of Past Years*, Lord Oxford and Asquith's *Fifty Years of British Parliament*, 2 vols (London, 1926), and his *Memoirs and Reflections* (London, 1928), and Lord Morley's *Recollections* (London, 1917). Even ex-cabinet members—remaining, as they do, privy councillors, and hence still sworn to secrecy—are expected, however, not to divulge much. In 1934, Mr. Edgar Lansbury was fined for printing a cabinet memorandum found among the papers of his father, an ex-minister; and later in the year all former ministers were requested to return copies of any memoranda which they had retained on leaving office.

net," declared Lord Curzon retrospectively in 1918, "often had the very haziest notion as to what its decisions were . . . cases frequently arose when the matter was left so much in doubt that a minister went away and acted upon what he thought was a decision which subsequently turned out to be no decision at all, or was repudiated by his colleagues." The creation of the war cabinet made the need even greater. Only half a dozen ministers were included, not all of them could attend regularly, and practically everything that was done had to be communicated to the greater number outside. Taking over a device already in use in the war committee of the Asquith coalition—which, in turn, had developed from the secretariat of the Committee of Imperial Defense—the cabinet therefore provided itself with a secretary who was to prepare agenda, keep minutes, and see to it that every decision arrived at was transmitted, not only to all of the cabinet members, but also to all other officials or departments concerned.

USES OF THE SECRETARIAT

The arrangement was supposed to be only for the duration of the War. But it proved so useful that in 1919 steps were taken to prolong it; and nowadays the cabinet secretariat (in law, attached to the Treasury) is looked upon as a permanent institution. Already by 1922 Lord Robert Cecil could remark that the secretariat did "a great deal more than merely record the decisions of the cabinet", and among the additional things which it still does—not by virtue of any statute, but merely under cabinet direction—are to arrange the agenda of cabinet meetings, to collect data and perform general secretarial work for both the cabinet itself and all cabinet committees, including the Committee of Imperial Defense, and similarly for various conferences, international and otherwise, with which the cabinet is concerned, to communicate cabinet decisions to all officials and departments that have need to know them, to act as a link connecting the service departments; and, indeed, to do whatever else the cabinet requires of it There are certain duties, too, in connection with the League of Nations. In 1917 and 1918, volumes were published containing reports of cabinet proceedings for the year. This was, however, only by way of contribution to keeping up the morale of a war-wracked nation, and in point of fact the published reports were of a very general character, rarely or never taking one behind the scenes. After the War, publication was discontinued, and nowadays cabinet proceedings remain no less confidential, and even secret, than before. Instead of being treasured only in members' minds, however —or, at best, in fragmentary notes—they are preserved in systematic

minutes, from which they may some day be exhumed by the historian for the enlightenment of an interested world.[1]

[1] W. I Jennings, *Cabinet Government*, 186–193, 208–216, J. R. Starr, "The English Cabinet Secretariat," *Amer. Polit. Sci Rev.*, May, 1928. A cabinet secretariat was set up in France also during the World War. In later years, it dwindled in importance, but more recently it has been overhauled and invigorated Impressed by the lack of anything of the kind at Washington, the President's Committee on Administrative Management, reporting in 1937, urged provision for six administrative assistants to the president, who, although for tactical reasons nowhere referred to as a secretariat, were envisaged as in effect constituting one. A bill making such provision became law in 1939.

The workings of the English cabinet, in general, are described in A. L. Lowell, *op. cit*, I, Chap. iii, H. Finer, *The Theory and Practice of Modern Government*, II, Chap. xxii, S. Low, *Governance of England* (rev. ed.), Chaps. ii, iv, W. R. Anson, *Law and Custom of the Constitution* (4th ed), II, Pt. i, Chap. ii, and especially W. I Jennings, *Cabinet Government*, Chap. iv, and H. J. Laski, *Parliamentary Government in England*, Chap. v. W. Bagehot, *The English Constitution*, Chaps. i, vi–ix, is decidedly worth reading. Much that is interesting and significant will be found in biographies and memoirs of such British statesmen as Gladstone, Disraeli, Lord Randolph Churchill, Campbell-Bannerman, Harcourt, Lord Oxford and Asquith, Lord Curzon, and Lloyd George. A classic comparison of the English cabinet system and the American presidential system is Woodrow Wilson, *Congressional Government* (Boston, 1885). See also H L. McBain, *The Living Constitution* (New York, 1927), Chap. iv.

CHAPTER VI

Administrative Organization and Functions

AN INQUIRER seeking the spot from which the day-to-day enforcement of the laws is directed and the multifarious administrative labors of the government are managed would be told to turn his steps toward a busy street in the vicinity of the Houses of Parliament known as Whitehall. There he would discover a group of venerable buildings in which are housed most of the great executive departments—the Treasury, the Foreign Office, the Home Office, and others, and there he would find the ministers and their principal subordinates at their daily tasks. For, as in other governments, executive duties are performed and administration directed in more or less separate and specialized establishments or departments, to which the ministers (with only a few exceptions as noted above) are in one way or another attached. In the present chapter, we are concerned with the central departments and some selected aspects of their work, in one that follows, attention will be directed to the great agency through which administration is carried on, *i.e.*, the permanent civil service.

"WHITEHALL"

VARIETY OF DEPARTMENTAL ORIGINS, FUNCTIONS, AND ORGANIZATION

In the United States, the ten executive departments of the national government stand on a common footing and bear a good deal of resemblance to one another. All have been created by act of Congress, all are presided over by single heads, known as secretaries except in the cases of the Post Office Department and the Department of Justice, all stand in substantially the same relations to the president and to Congress. In France and other Continental European countries, the executive departments likewise present an appearance of having been planned with a good deal of regard for logic and symmetry.[1] The English departments, on the other hand, are decidedly heterogeneous.[2] To begin with,

[1] See p. 472 below.

[2] Of course there is plenty of heterogeneity in the United States, too, if the picture be widened to include the bewildering array of boards, commissions, and other "independent establishments" at Washington There are independent establishments in Great Britain also, but they are fewer than in the United States, and the present comparison has to do with major "departments" only

they show no uniformity of nomenclature; some are offices of secretaries of state, some are known as boards, and some as ministries. Some, *e.g.*, the Treasury, represent survivals of independent offices which flourished in earlier times; eight, including the Foreign Office and the Home Office, are offshoots of an ancient "secretariat of state",[1] others, like the Board of Education, have sprung from committees of the privy council; still others, such as the ministries of labor and health, have been created outright by statute. Certain departments find their reason for existence in the oldest and most fundamental functions of government, such as defense; others have to do, rather, with newer (mainly social and economic) activities, such as education, public health, and the regulation of industry. Some are on a different plane of importance from others; the Treasury, as we shall see, is in a class quite by itself. Finally, there is hardly less diversity of organization than of origins and functions. To be sure, in a majority of cases the departments are presided over by a single responsible minister, assisted by a parliamentary under-secretary, two or three (or more) permanent under-secretaries, and a greater or lesser body of secretaries, counsellors, legal advisers, chiefs and assistants, and other non-political officials, who, under direction, carry on the detailed administrative and other work and whose tenure is not affected by the political fortunes of their chiefs. Beyond these few major aspects, however, there are more differences than similarities.

To describe even the dozen or more departments of first rank would lead us into greater detail than is desirable here. Rather, it must suffice (1) to dwell a moment on that one of the number which, as has been indicated, is the most important of all, *i.e.*, the Treasury; (2) to pass the others in very hasty review; (3) to say a word about the perennial problem of administrative reorganization; and (4) to take note of certain functional developments which at once illustrate significant modes of constitutional growth and stir some of the most vigorous discussions of current governmental tendencies.

THE TREASURY

Next to Parliament and the cabinet, the institution which the student of English government encounters most frequently is the Treasury. Practically everything that is done calls for expenditure of money; money for national purposes can usually be had, and, speaking broadly, can be spent, only with Treasury approval. This alone would be sufficient to establish Treasury primacy. But, in addition, within the wide confines of the Treasury are found multifold agencies having to do with matters

[1] See p. 100, note 1, below.

only partly or incidentally fiscal. A Treasury official, for example, is the technical head of the permanent civil service; many of the rules governing that service are Treasury-made; in the Treasury one finds the "parliamentary counsel" employed for the drafting of all government bills.[1] Alone among the departments, the Treasury exercises substantial control over all of the others, itself not engaged to any large extent in actual administration, it nevertheless has more to do than does any other authority with the ways in which administration, all round, is carried on.

EVOLUTION OF THE TREASURY BOARD

The origins of the Treasury are bound up with the development of the Exchequer,[2] or revenue office, of the Norman-Angevin kings, which in the twelfth and thirteenth centuries gradually passed into the hands of a Treasurer, later known as the Lord High Treasurer. By Tudor times, this official had grown inconveniently powerful, and in 1612 James I tried the experiment of putting the post "in commission," *i.e.*, bestowing it upon a board of Lords Commissioners of His Majesty's Treasury, with a certain primacy in a First Lord. The plan worked well, and after Queen Anne's day no Lord High Treasurer was ever again appointed. Thenceforth, the duties connected with the office devolved upon a Treasury Board of five members; and in law they are still provided for in this way. Further developments, however, in the nineteenth century, brought it about that the Board gave up transacting business in a collective capacity, yielding in favor of one of its members, the Chancellor of the Exchequer. The First Lord indeed retained nominal leadership, but he was likely to be an important figure only when, as was increasingly the case after the eighteenth century, he was also prime minister.

Today, therefore, the situation is substantially this: The Treasury Board, which legally has charge, never meets (except to transact one or two minor sorts of formal business), and substantially all of the work is done by the members individually. Indeed, practically all of it except signing papers and some other incidental duties, is performed by one member alone, *i.e.*, the Chancellor of the Exchequer, with his staff. The First Lord, the nominal head, is invariably (under terms of the Ministers of the Crown Act of 1937) prime minister.[3] Three or more other members, known as the Junior Lords, have certain minor tasks in connection with the Treasury, but their

[1] See p 228 below.

[2] The name arose from the chequered table at which the work of accounting was performed

[3] See p 76 above.

really important work is performed in the capacity of assistants to the Parliamentary Secretary to the Treasury, who is chief government whip in the House of Commons; in other words, they are themselves government whips.

THE CHANCELLOR OF THE EXCHEQUER

The only member of the group who gives his attention primarily to Treasury business is the "Second Lord," otherwise known as the Chancellor of the Exchequer. To all intents and purposes, this official is the finance minister of the realm, and as such he counsels with the spending departments and officers on the appropriations they will ask, prepares the annual budget (embodying a statement of the proposed expenditures of the year and a program of taxation calculated to produce the requisite income), pilots financial measures through Parliament, acts as master of the mint, and supervises the collection of the revenues. It is hardly necessary to add that the nature of his duties requires that he be a member of the House of Commons, where finance bills make their first appearance, and where alone, in point of fact, their fate is in these days determined. Indeed, the Chancellor of the Exchequer is usually government leader in that house if for any reason the prime minister finds it necessary to delegate the responsibility to one of his colleagues. In any event, it goes without saying, he is one of the busiest men in the government, and one of the most important.

TREASURY FUNCTIONS

Surveying the governmental system as a whole, an expert body—the Machinery of Government Committee of 1918—summarized the major financial functions of the Treasury as follows: "(1) Subject to Parliament, it is responsible for the imposition and regulation of taxation and the collection of the revenue. . . . (2) It controls public expenditure in various degrees and various ways, chiefly through the preparation or supervision of the estimates for Parliament. (3) It arranges for the provision of the funds required from day to day to meet the necessities of the public service, for which purposes it is entrusted with extensive borrowing powers. (4) It initiates and carries out measures affecting the public debt, currency, and banking. (5) It prescribes the manner in which the public accounts shall be kept."[1] This is truly an imposing list. Translating it into somewhat less formal language, the Treasury, in the first place—with the aid of the spending departments—prepares all estimates of expenditure. Similarly, it prepares all estimates of revenue and decides what changes in taxation will be required to meet expected outlays. Pre-

[1] *Report of the Machinery of Government Committee*, p. 16.

senting the data and recommendations to Parliament, it secures that body's necessary, even though sometimes rather perfunctory, approval of its plans.[1] It supervises the collection of all revenues, the coining and printing of money, the floating of loans, and the safekeeping of the public funds. It determines how much of the money that Parliament has made available to a spending agency shall actually be used, and under what conditions (for it does not follow that all that has been granted must be spent). Through a semi-independent Exchequer and Audit Department, presided over by a non-political Comptroller and Auditor-General, it sees that every request for a "credit" against public funds kept in the banks is supported by parliamentary authority. Through the same medium, it likewise checks, after the money has been spent, to ascertain whether every disbursement actually made had similar justification. In the rôle of financial expert, it continuously supervises the organization and personnel of the spending departments, wields ultimate control over civil service regulations, and advises on and often in effect fixes wage and salary scales. Itself only incidentally and in small degree a spending department, the Treasury keeps its hand on every department, agency, and officer engaged either mainly or incidentally in collecting, spending, or paying out national moneys; and in pursuing its endless task, it becomes an all-pervading—one is tempted to add an all-powerful—instrumentality of centralized administrative correlation and control.

THE REVENUES AND THE CONSOLIDATED FUND

The revenues are collected through four great sub-departments or services, *i.e.*, the Board of Inland Revenue, the Board of Customs and Excise, the Post Office, and the Commissioners of Crown Lands, each with an extensive force of its own. The Post Office, which has charge of communication by telegraph (since 1870) and telephone (since 1911) as well as by post, and which, through a branch known as the British Broadcasting Corporation conducts the business of radio broadcasting as a government monopoly, is presided over by a minister, the Postmaster-General, who is sometimes included in the cabinet. The other three services are in the hands of statutory boards of commissioners.[2] In earlier days,

[1] The budgetary aspects of the Treasury's activities are dealt with in Chap xiii below

[2] For a brief account of the collection of the national revenue (90 per cent of which is gathered in by the first two agencies mentioned), see J. W Hills and E A Fellowes, *British Government Finance* (New York, 1932); Chap iv. Of the British people's annual income of about four billion pounds, something like one-fifth passes every year through the hands of the state On the Post Office and postal policy, see E Murray, *The Post Office* (London, 1927)—a volume in the "White-

the proceeds of the various taxes were paid into separate accounts or funds at the Exchequer, and Parliament, when making a given appropriation, would specify the fund from which the particular outlay should be met. An act of 1787, however, introduced an improved plan under which all revenues (with slight exceptions) are now paid into a single Consolidated Fund, from which all disbursements (again with slight exceptions) are made. Most of the taxes are imposed by so-called "permanent" statutes, which stand unchanged for considerable periods of time; but some are laid afresh each year, or at all events are subject to an annual revision of rates. Similarly, some expenditures are authorized by continuing measures and others by annual appropriations. Numerous disbursements fall in the latter category; indeed, only those which it is particularly desirable to keep out of politics, *e.g.*, the Civil List, the salaries of judges, and interest on the national debt, are "Consolidated Fund charges," paid directly out of the Fund without annual authorization.[1] Expenditures which are voted from year to year are said to be for the "supply services," being the outlays approved by the House of Commons in committee of supply, which is a form of committee of the whole.[2]

DEFENSE DEPARTMENTS:

Four of the present-day executive establishments may be bracketed together under the general head of "defense departments." Two of the number go back some distance historically; the others have existed only since the World War. All are presided over and otherwise manned mainly by civilians, but with ample provision for advice from military, naval, and air experts.

1. THE ADMIRALTY

Composed of three "civil lords," or political members, and four "sea lords," *i.e.*, men of experience and standing in the navy, and presided over by a First Lord

hall Series," which, as a collection of historical and descriptive treatises on sundry government agencies and services, bears a good deal of resemblance to the "Service Monographs of the United States" issued by the Institute for Government Research, now a division of the Brookings Institution in Washington.

[1] It is to be observed, however, that whereas before the World War Consolidated Fund charges amounted to hardly more than a quarter of the total national outlay, they now comprise half or more of it, on account of the enormous increase of the sums required for interest on or amortization of the national debt.

[2] See p. 240 below. The best systematic accounts of the Treasury are R. G. Hawtrey, *The Exchequer and the Control of Expenditure* (London, 1921), and T. L. Heath, *The Treasury* (London, 1927)—the latter in the Whitehall Series. For briefer treatment, see A. L. Lowell, *op. cit.*, I, 115–130; W. R. Anson, *op. cit.* (4th ed.), II, Pt. 1, 186–201, and W. I. Jennings, *Cabinet Government*, Chap vii. On the Treasury's important relations to the civil service, see p. 127 below. The financial system in general is dealt with in U. K. Hicks, *The Finance of British Government* (New York, 1938).

who is to all intents and purposes a minister of marine, a board of "Lords Commissioners for Executing the Office of Lord High Admiral" manages the affairs of what we in the United States should call a navy department. Unlike the Treasury Board, which never meets, the Admiralty Board holds regular and frequent sessions.

2. THE WAR OFFICE [1]

The controlling authority here is an Army Council, on the same pattern as the Admiralty Board, and with a Secretary of State for War (first appearing under this title in 1794), as principal official.[2]

3. THE AIR MINISTRY

The World War witnessed a remarkable development in the use of air-craft for military purposes, and in 1917 Great Britain became the first nation to centralize the supervision of armed aeronautical activity in a separate government department. The preexisting air establishments in the War Office and Admiralty were brought together in an Air Ministry; the flying branches of the army and navy were merged into a Royal Air Force under the new ministry's supervision; and, although a war-time expedient, the ministry survived the restoration of peace, and today, through an Air Council presided over by a Secretary of State for Air, not only administers the Air Force but controls civil aviation as well.

4. THE MINISTRY OF PENSIONS

Closely related to the foregoing defense departments in origin and function, although not in organization, is the Ministry of Pensions. Formerly, the Admiralty and War Office contained bureaus which dis-

[1] Historically, the War Office and seven other departments arose from a curious evolution of the ancient office of king's secretary, first heard of in the reign of Henry III. Originally there was but a single official known as king's secretary, or "secretary of state", but, after sundry transmutations, a second was added in the eighteenth century, although no new *office* was created for him. At the opening of the nineteenth century, a third was provided for, in 1854 a fourth, after the Indian mutiny of 1857 a fifth, during the World War a sixth, in 1925 a seventh, and in 1926 an eighth. In theory, the incumbents of all of these eight "principal secretaryships of state" hold the same office, and except as limited by a few statutory restrictions, each is legally competent to exercise the functions of any or all of the others. Acts of Parliament confer powers, not on one of the secretaries specifically, but simply on "a secretary of state," the distribution of functions being a matter of understanding and practice. In actual usage, each of the eight secretaries, though signing all papers as simply "one of His Majesty's principal secretaries of state," holds strictly to his own domain. The group comprises (1) the Secretary of State for Foreign Affairs, (2) the Secretary of State for the Dominions, (3) the Secretary of State for the Colonies, (4) the Secretary of State for War, (5) the Secretary of State for India, (6) the Secretary of State for the Home Department, (7) the Secretary of State for Air, and (8) the Secretary of State for Scotland.

[2] H. Gordon, *The War Office* (London, 1935), in the Whitehall Series.

tributed pensions for death and disability out of the funds of the state; and during the World War sundry parliamentary commissions reported plans for increasing the sums available and for administering them more effectively. The upshot of a number of more or less unsatisfactory experiments in 1915–16 was an act of December, 1916, unifying in a Ministry of Pensions most of the powers and duties of preexisting pension authorities. This ministry has to do only with military and naval pensions; old age pensions and civil service pensions are administered by entirely different authorities.[1]

DEPARTMENTS HAVING TO DO WITH FOREIGN AND IMPERIAL AFFAIRS:

Another group of departments consists of those having to do with foreign and imperial relations. One, *i.e.*, the Foreign Office, conducts the country's dealings with other independent states; three others, *i.e.*, the Dominions, Colonial, and India Offices, manage relations with the overseas dominions and dependencies.[2] A moment's reflection upon Britain's position in the world—the complexity of her interests abroad, the number and extent of her colonial possessions, and the critical character of her position in India—will suggest that every one of the number is of rather special importance.

1. THE FOREIGN OFFICE

The work of the Foreign Office is to a less extent administrative, in the proper sense of the term, than that of most other departments. In the main, it consists, rather, in gathering and organizing information, corresponding with foreign governments, preparing instructions for representatives abroad, negotiating treaties and conventions, and formulating policy. These are difficult, delicate, and sometimes hazardous tasks, and it goes without saying that this branch of the government knows and does many things which the well-being of the country forbids to be made public, at all events until after a good deal of time has elapsed. From this it follows, first, that the Foreign Secretary is selected with more regard for prestige and experience than other department chiefs; second, that the proportion of superior officials in this department is larger than in others; third, that a far greater proportion of decisions and actions emanate from, or at all events are expressly approved by, the head of the department than

[1] While this book was in press, Prime Minister Chamberlain submitted to Parliament a bill for the establishment of a Ministry of Supply, to be charged with speeding up the delivery of munitions and with finding and storing raw materials for war-time use.

[2] In Stanley Baldwin's third ministry, formed in 1935, Captain Anthony Eden appeared as Minister for League of Nations Affairs. The post, however, has not been continued.

in departments whose work is more largely administrative; and fourth, that the department is more detached, and even immune, from parliamentary control than any of the others. All of the threads are gathered tightly in the Foreign Secretary's hands.[1] Parliament can promote or thwart foreign policies by granting or withholding funds; a foreign minister whose acts or policies are disliked can be got rid of by sustained opposition in the House of Commons, treaties are sometimes presented for parliamentary approval (invariably in case they cede territory, impose a burden on the national treasury, or affect the substantive rights of British subjects), and the cabinet is expected to keep both houses informed, at least in a general way, on the state of foreign affairs. Much of the time, however, the Foreign Office functions without much actual relation to Parliament.[2]

Until 1921, the Foreign Service, both diplomatic and consular, although supervised by the Foreign Office, was a distinct organization, precisely as was the Foreign Service of the United States, in relation to the State Department, until 1924. A statute of the year mentioned, however, brought about a closer relation, with results generally regarded as satisfactory. All members of the combined establishment are now liable for service both at home and abroad, and recruits are regularly sent into the field for a period before being assigned definitely to the Foreign Office or to the diplomatic service for a career. The administrative side of the consular service is looked after by the Foreign Office, but its commercial work is directed by a different organization, the so-called Department of Overseas Trade, established in 1917 to do away with conflicts which had arisen between the commercial attachés and the consuls, and also to enable better use to be made of commercial information collected by the consular officials. This newer agency is controlled partly by the Foreign Office and partly by the Board of Trade, occupying, indeed, a quasi-independent position between the two.[3]

[1] At all events, as nearly so as the increasing arduousness of that official's duties permits The establishment of the League of Nations and the necessity of consulting more constantly than formerly with the governments of the overseas dominions have added much to the burdens of an already overworked department head It is estimated, indeed, that the work of the Foreign Office has increased five-fold since 1914 Some relief, however, is being found through the transference of certain activities to other agencies See S H. Bailey, "Devolution in the Conduct of International Relations," *Economica*, Nov, 1930. The daily routine of a foreign secretary is described interestingly in Viscount Grey, *Twenty-five Years* (New York, 1925), II, Chap xxx.

[2] On the subject of treaties, see p 47 above.

[3] J. Tilley and S Gaselee, *The Foreign Office* (London, 1933), in the Whitehall Series, "The British Foreign Office," *For Policy Assoc Information Service*, IV, No 24 (Feb 6, 1929), H K Norton, "Foreign Office Organization," *Annals Amer*

2. COLONIAL AND DOMINIONS OFFICES

By the time when (1854) a separate Colonial Office made its appearance, various parts of the Empire enjoyed widely differing degrees of autonomy, requiring the department's work to be conducted in such a way as to be directive where the dependencies had few or no rights of self-government, but only consultative, or even merely informative, where, as in Canada and Australia, full self-government had been, or was being, arrived at. From 1907 to 1921, the ministry was organized in two main sections, the colonies and protectorates division and the dominions division, and in 1921 a third section, known as the Middle East department, was added, with administrative control over the mandated territories in the Near East. In 1925, however, the dominions division was erected into a separate and coordinate ministry, the Dominions Office; and although the new establishment continued to be housed in the same building as the Colonial Office, and for five years had the same administrative head, in 1930 it was given a fully separate status, with a minister of its own.[1]

3. THE INDIA OFFICE

Down to 1858, the government of British India was carried on by the East India Company, subject to supervision by a Board of Control representing the crown. The Mutiny of 1857 further embarrassed the already discredited Company, which soon lost its charter, and the British government took over full and direct management of Indian affairs. Control of administration was assigned to a new ministry presided over by an additional secretary of state and known as the India Office; and to advise the department a Council of India was created, consisting of from 10 to 15 members (at least nine of whom must have served or resided in India for 10 years) appointed by the secretary of state for a term of seven years. Cautious changes in the direction of more autonomy for the dependency have been made, notably by Government of India Acts of 1919 and 1935; but the India Office [2] still forms an essential link between the administrative agencies in India and the policy-making authorities at London.[3]

Acad. Polit. and Soc. Sci, cxliii, Supp. (May, 1929); A. Cecil, *The British Foreign Service* (London, 1927). Comparisons with the American Department of State and Foreign Service may be made by consulting F. A. Ogg and P. O. Ray, *op. cit.* (6th ed.), Chap. xxxi and accompanying references.

[1] G. V. Fiddes, *The Dominions and Colonial Offices* (London, 1926), Chaps. i–v, in the Whitehall Series, A. Bertram, *The Colonial Service* (Cambridge, 1930); H. L. Hall, *The Colonial Office; A History* (London, 1937).

[2] A Burma Office is now attached, the combination being known as the India Office and Burma Office.

[3] M. C. C. Seton, *The India Office* (London, 1926). Cf. pp. 380–382 below.

DEPARTMENTS HAVING TO DO WITH ECONOMIC AND SOCIAL MATTERS

Most or all of the establishments thus far mentioned are agencies for exercising governmental functions—finance, defense, foreign relations—that are not only the oldest historically, but by their very nature primary and fundamental. As recently as a hundred years ago, there were, indeed, few others. Then started, however, a remarkable era of expansion, heralded in England by the first parliamentary grant for education in 1832, the first factory act in 1833, the new poor law of 1834, the first public health acts in 1848, and other measures pointing in the direction of the progressively broadening public control over economic and social relationships and processes which has become so characteristic of the present age. From newly developed functions and activities sprang need for new machinery, and to the already lengthy list of Whitehall establishments which we have brought to view were added many others, of which four concerned mainly with economic affairs and two with social matters may be singled out for a word of comment. Three of the six owe their present form to legislation dating no further back than 23 years ago.[1]

1. THE BOARD OF TRADE

First, there is the Board of Trade, transformed from a privy council committee (although legally it is still such a committee) in 1862. Technically, all of the "principal secretaries of state," together with several other important personages, are members. Actually, however, this board, like a number of others, is a phantom, in that it never meets and its work is carried on under the sole direction of a single official, the President of the Board, and his staff. Until three-quarters of a century ago, the Board occupied itself chiefly with compiling commercial statistics and advising other departments on commercial matters. These functions have now passed to the Department of Overseas Trade.[2] But various other duties have been acquired, so that at present, in addition to gathering and publishing statistics on labor, wages, and other industrial subjects, the Board maintains a register of British ships, makes and executes regulations for the safety of merchant vessels, provides and keeps up lighthouses, controls harbors, registers and supervises joint-stock companies, registers patents and trademarks, maintains standards of weights and measures, admin-

[1] An excellent piece of reading on the development here referred to is G. B. Adams, *Constitutional History of England* (rev. ed.), Chap. xxii by Robert L. Schuyler.

[2] See p. 102 above.

isters the law of bankruptcy, and grants provisional orders empowering borough councils to undertake the ownership or operation of tramways, gas plants, waterworks, and other public utilties.[1]

2. THE MINISTRY OF AGRICULTURE AND FISHERIES

In 1889, a Board of Agriculture was created to take over the duties previously discharged by a committee of the privy council in connection with diseases of animals, together with the functions of former land commissioners pertaining to inclosures, allotments, and the drainage and improvement of land; and in 1903 supervision of fisheries was transferred from the Board of Trade to the renamed Board of Agriculture and Fisheries. Like the Board of Trade, this board was a phantom; for although it consisted legally of a dozen of the highest officers of state, only one of its members, *i.e.*, the President, gave time or thought to its work. During and after the World War, much legislation was enacted looking to the reorganization of British agriculture, and in 1919 the Board became the Ministry of Agriculture and Fisheries, with research, educational, and advisory functions broadly similar to those of the Department of Agriculture in the United States—save, of course, for the inclusion of the fishing industry among the objects of its attention.[2]

3. THE MINISTRY OF LABOR

The Ministry of Agriculture and Fisheries, and to a considerable extent the Board of Trade, performs functions in connection with particular industries or occupations. The Ministry of Labor (created in 1916), on the other hand, has to do with industries and occupations of many different kinds, notably in connection with the administration of laws relating to labor exchanges (employment offices), unemployment insurance, minimum wage standards, and the settlement of industrial disputes. In these various fields, the general policy of the government has been to promote and supplement the activities of trade unions, employers' associations, and other voluntary groups; and the function of the Ministry of Labor is, in the main, not to exercise positive control, but to cooperate with non-governmental groups and agencies in better organizing the relations between employers and workers.

[1] H. L. Smith, *The Board of Trade* (London, 1928), in the Whitehall Series. On the regulation of public utilities in Great Britain, with which the Ministry of Transport also has much to do, see M. E. Dimock, *British Public Utilities and National Development* (London, 1933), and O. C. Hormell, *Control of Public Utilities Abroad* (Albany, N. Y., 1930).

[2] F. Floud, *The Ministry of Agriculture and Fisheries* (London, 1927), in the Whitehall Series.

4. THE MINISTRY OF TRANSPORT

With the country's railroads—taken over by the government during the World War—still publicly administered, a Ministry of Transport was set up by statute in 1919. Two years later the railroads were returned to private management. Less important than it was expected to be, the ministry, however, survives, one of its divisions being concerned with the improvement and expansion of electric lines, docks, harbors, canals, and main highways, a second with fares, rates, and charges, and a third with public safety.[1]

5. THE MINISTRY OF HEALTH

A department of larger social importance is the Ministry of Health established in 1919 when it was deemed necessary to consolidate under a single direction a wide variety of public health and related functions previously dispersed among a number of unrelated administrative agencies. Medical examinations in connection with recruiting troops for service during the World War brought to light grave facts concerning the physical fitness of the people, especially the industrial classes, and forced the conclusion that the state must in future concern itself far more with matters of public health than in times past. Practically every major function that the ministry exercises today came to it by transfer from some preëxisting ministry or board, notably the Local Government Board (1871–1919), the abolition of which at this time removed a landmark familiar to every student of the pre-war administrative system. Some of the functions so transferred were manifestly incompatible to a ministry of health and in later years have been reassigned by order-in-council to departments where they more logically belong. On the other hand, new and larger powers in relation to sanitation, housing, town planning, and various other matters have been conferred, and the department is the one through which most government services are today most effectively supervised and controlled.[2]

6. THE BOARD OF EDUCATION

Gradual growth of central legislation and expenditure on education led in 1899 to conversion of a body of committees into the present Board of Education, headed by a single full-time member, the president. The Board has nothing to do with the universities and relatively little with schools that do not receive financial aid from the national government. It does not, indeed, provide or administer school sys-

[1] On the government and management of post-office and other public services, see W. A. Robson, *The Public Service* (London, 1928).

[2] E. Newsholme, *The Ministry of Health* (London, 1925); in the Whitehall Series; E. G. Bennington, *English Public Health Administration* (new ed., London, 1926); W. A. Robson, *The Social Services* (London, 1926).

tems, construct buildings, engage or supervise teachers, prescribe or supply textbooks, regulate curricula (except in general terms), or control methods of teaching. Rather, its business is that of supervising and coordinating educational administration as carried on under the immediate direction of the educational committees of county and borough councils, inspecting all grant-aided schools (and others on request), carrying on educational investigations, publishing bulletins and reports, and helping generally to keep the educational system on a satisfactory level.[1]

THE HOME OFFICE

Descended more directly from the early secretariat than is any other of the departments, and aptly termed by Lowell a "residuary legatee," the Home Office serves many, if usually not very spectacular, uses—receiving and transmitting petitions to the crown, considering and advising on applications for pardons, supervising parliamentary elections, naturalizing aliens, approving arrangements for the "assizes" (or circuits) of judges, directly controlling the police system of London, and inspecting and fixing standards for police establishments throughout the remainder of the country, along with other activities too numerous to be mentioned.[2]

THE LORD CHANCELLOR

The drift of history has left England with no unified department of justice such as commonly exists in other countries. In the Lord Chancellor, however, she has a more important official than the head of any mere judicial department; and it may properly be noted here that this imposing dignitary (1) recommends for appointment to higher judicial positions, and in fact, although not in form, appoints and removes the county court judges and most of the justices of the peace; (2) is chief judge in the Chancery division of the High Court of Justice and in the Court of Appeal,[3] (3) is the principal legal member of the cabinet, even though that body's *official* legal advisers are the "law officers" of the crown;[4] and (4) presides in the House of Lords, being invariably made a peer (if not already one) at the time of his appointment. To the Lord Chancellor, indeed, are assigned more tasks than any man can well perform, so that there may have

[1] L. A. Selby-Bigge, *The Board of Education* (London, 1927), in the Whitehall Series.

[2] E. Troup, *The Home Office* (London, 1925), in the Whitehall Series. On the Home Office's functions in relation to police, see R. B. Fosdick, *European Police Systems* (New York, 1915), 39–65, and C. C. H. Moriarty, *Police Procedure and Administration* (London, 1937). Cf. B. Thompson, *The Story of Scotland Yard* (New York, 1936).

[3] See p. 333 below.

[4] The Attorney-General and his colleague and substitute, the Solicitor-General.

been some truth in the observation of a former incumbent that the work falls into three parts: "first, the business that is worth the labor done; second, that which does itself; and third, that which is not done at all."

Such, in bare outline, are the principal departments and offices through which the ever-widening executive and administrative functions of the national government are performed. In the succeeding chapter, attention will be directed to the army of men and women who for the most part do the work, namely, the permanent civil service. Before coming to this, however, we must notice some challenging problems and tendencies of the departments as a group.

PROBLEMS OF ADMINISTRATIVE REORGANIZATION

First to be mentioned is the inevitable question of structural and functional reorganization. Government being the dynamic thing that it is, the machinery through which it performs its services never becomes so balanced and efficient as not to require overhauling and readjustment, constant vigilance is necessary, indeed, to keep the instrumentalities of administration even measurably adapted to their tasks, and almost superhuman efforts to preserve coordination and secure economy in the workings of a great administrative system as a whole. In the United States, this matter has received belated but steadily increasing attention in the past 25 or 30 years. Several of the states, *e.g.*, Illinois, New York, and Virginia, have carried out extensive reorganizations; while a reorganization act passed by Congress early in 1939 has been made the basis for two sweeping presidential orders transferring, consolidating, and otherwise rearranging federal administrative agencies in the interest of efficiency and economy.[1] Great Britain is not without similar problems. Even so cursory a survey of the existing administrative set-up as that given above brings to light duplications, questionable divisions of authority, and other actual or potential difficulties. Thus, the rivalries of three independent and mutually jealous defense departments—Admiralty, War Office, and Air Office—produce conflicts and delays which a rather weak advisory Committee of Imperial Defense has never been able to avert. The extraordinarily wide range of regulative activities in the broad domain of economic life are parcelled out, more or less haphazardly,

[1] These changes were largely in pursuance of recommendations made in a *Report of the President's Committee on Administrative Management* (Washington, 1937). Cf F. A. Ogg and P. O Ray, *op cit.* (6th ed.), Chap. xv.

among a dozen different departments and boards, with no provision whatever for coördination beyond the very limited amount that an overworked cabinet is able to supply. Factory inspection remains a function of the Home Office, although it would seem to belong in the Ministry of Labor, or even the Ministry of Health. The same is true of mine inspection, at present carried on by the Board of Trade. Departments like the Ministry of Health and Board of Education that have to do in a large way with supervising administration carried on through the local authorities frequently run into serious conflicts of jurisdiction or policy. The linking up of fisheries with agriculture in a single department is complained of by the fishing industry as unfair to its interests.

PROPOSALS FOR CLOSER INTEGRATION

As time goes on and activities multiply, the natural tendency is to set off preexisting boards, committees, or other branches as separate departments, as happened, for example, in the case of the Dominions Office. Sometimes there is distinct gain in doing this—especially when the creation of the new ministry means the bringing together in a single establishment of more or less similar activities formerly carried on in a number of scattered departments. The best thought on the subject looks rather, however, to integration than to dispersion. While advocating the creation of at least one entirely new department, *i.e.*, a department of research and information, the most important official report thus far made on the subject urged a drastic reduction of the number of departments and a coördination of those that remained, on the general plan of the French system, or of the system adopted by those American states which have reconstructed their administrative machinery most completely.[1] As the experience of our country abundantly shows, administrative reorganization on broad lines of preconceived principle is an exceedingly difficult thing to bring about. Vested official interests interpose obstacles; no plan can be formulated that is in every respect superior to all others; the public is usually apathetic. Even piecemeal reconstruction, however, often entails considerable gains, and in the British system these

[1] *Report of the Machinery of Government Committee of the Ministry of Reconstruction*. Cmd. 9230 (1918). The Geddes Committee on National Expenditure suggested in 1922 that all of the defense services be placed under a single Ministry of Defense, and a report of the Liberal Industrial Inquiry (sponsored by the Liberal party) in 1928 recommended that the Ministry of Labor be rechristened Ministry of Industry, with all appropriate functions brought together under its jurisdiction (*Britain's Industrial Future*, 471), but in neither case has action been taken. Cf. proposals made in R. Muir, *How Britain Is Governed* (3rd ed.) 108–115.

are happily facilitated by the latitude within which they can be effected by simple order-in-council [1]

INCREASING USE OF ADVISORY COMMITTEES

An interesting and relatively new development in connection with the executive and administrative work of the government is the creation of standing advisory committees composed of well-informed persons drawn mainly or wholly from outside of government circles. Such committees may be intended to serve the cabinet as a whole, and through it, of course, Parliament as well, or they may function simply in relation to a particular department or office. The best illustrations of the former type are (1) the Committee of Imperial Defense (dating from 1904), which, as has been pointed out, is not strictly a cabinet committee, but rather a body consisting in part of cabinet officers, but also in part of other persons, sometimes including representatives of the dominions, and charged with investigating, reporting, and recommending on all questions of national and imperial defense, and (2) an Economic Advisory Council, into which a cabinet committee on civil research was transformed by the second Labor government in 1930, and charged with studying and reporting to the cabinet on commercial, industrial, and other economic problems of general interest.[2]

Equally important, however, is the rise of advisory committees attached to particular departments. There has never been anything to prevent department heads and other officers from conferring informally with individuals or groups outside of the public service, and consultations of the kind must often have taken place for generations past. As long ago as 1899, provision for departmental advisory committees composed of non-governmental experts (usually from five to fifteen in number) began to be made by statute—first in an act of the year mentioned creating the present Board of Education, and later in the Trade Boards Act of 1909, the National Insurance Act of 1911, and one or two other measures. During the World

[1] Tendencies toward reorganization within several of the departments are described in M. L. Dhonau, *Decentralization in Government Departments* (London, 1918).

[2] Cf. the national economic council of Germany under the Weimar constitution (see pp. 649–651 below). The British council consists of the prime minister as *ex officio* chairman, the Chancellor of the Exchequer and three other ministers, also *ex officiis*, such other ministers as the prime minister may name, and varying representatives of business, banking, cooperative, trade-union, scientific, and other interests (also named by the prime minister—altogether usually about 25 persons). See E. Lindner, *Review of the Economic Councils in the Different Countries of the World* (Geneva, 1932), 27–30. On the whole, the council's usefulness has not yet been demonstrated convincingly.

War, large numbers of such committees were provided for by executive orders, without express statutory authority; and beginning again with acts of 1919 relating to the ministries of transport, health, and agriculture and fisheries, extensive statutory authorizations were made. The Machinery of Government Committee, already mentioned, warmly endorsed the advisory committee plan, "so long as the advisory bodies are not permitted to impair the responsibility of ministers to Parliament"; and the general testimony is that the committees are rendering good service, not only by bringing to the departments information and advice based on first-hand knowledge, but by inspiring greater public confidence in administrative authorities as being guided by such information and advice rather than by sheer theory or bureaucratic presuppositions. It goes without saying that the committees have no power to direct or control administrative work, or to dictate policy. Their business is solely to discuss and advise.[1]

Turning to still more definitely functional aspects of the departments, we encounter two related but distinct developments that not only have of late attracted a great deal of attention, some of it decidedly unfavorable, but in the view of competent scholars constitute the most significant changes in the English constitutional system since Dicey's classic description was written. One, *i.e.*, the delegation of legislative power to administrative authorities, has to do with the relations between the executive establishments and Parliament, or, as English writers would be likely to say, between "Whitehall and Westminster"; the other, *i.e.*, the turning over of judicial power to the departments, or to tribunals which the departments control and sometimes even create, materially affects the relation between the executive establishments and the courts. Both developments vitally affect the rights and interests of the individual citizen.

GROWTH OF ADMINISTRATIVE LEGISLATION

In earlier centuries, Parliament, as we have seen, slowly gathered to itself ample powers of legislation, and the day came when it was sturdily contended that—apart, of course, from the ever-developing common law—no new law could properly come into being except with the sanction of Parliament. At no time did this mean that all enacted or decreed laws were actually and literally

[1] J. A. Fairlie, "Advisory Committees in British Administration," *Amer. Polit. Sci. Rev.*, Nov., 1926. Committees of the sort are employed most extensively in the home departments. In the summer of 1939, there were no fewer than 97 in all (more than a score in the Ministry of Agriculture and Fisheries alone).

made by the two houses; for the crown clung resolutely to its ancient law-making authority, and Parliament was always obliged, or at all events found it expedient, to tolerate, and even to recognize, that authority within certain bounds. As late as the seventeenth century, the crown issued proclamations and enforced them as law, on the sole basis of prerogative, and, as every student of the period knows, the practice became one of the principal points of contention between the Stuart kings on the one side and Parliament and the judges on the other. So far as independent and autocratic royal legislation was concerned, the matter was settled by the triumph of the parliamentary cause, from 1689 onwards, it was a fixed principle of the constitution that laws could be made only by Parliament or with the consent (express or tacit) thereof.

PARLIAMENTARY DELEGATION OF LEGISLATIVE POWER

Even before this turning point was reached, however, it was found both convenient and necessary for Parliament to delegate the actual exercise of certain law-making powers to the crown, and almost at once after the Revolution the issuance of orders-in-council in pursuance of authority conferred at Westminster—"statutory orders," that is to say, as distinguished from "prerogative orders"[1]—became a familiar, even if not frequent, event. Through the eighteenth century, and well into the nineteenth, Parliament granted such authority sparingly, preferring (and in those days having the time) to legislate directly even upon detailed matters of an essentially administrative nature. After 1832, however, when great fields of governmental regulation and administration—poor relief, public health, factory inspection, transportation, education—were newly entered or subjected to new forms of control, acts delegating power to make rules having the force of law multiplied rapidly, and by 1893, when a Rules Publication Act undertook to regulate certain features of the procedure involved, the volume of such rules had come to be truly impressive. Since the date mentioned, the development has continued on even larger lines, notably during and since the World War. In a single year (1919), no fewer than 60 out of 102 public acts passed by Parliament delegated legislative power to some subordinate authority; in a more recent year (1927), 26 out of a total of 43 acts—a year during which, while Parliament was

[1] Prerogative orders did not wholly cease, and to this day "prerogative legislation," *i e*, orders issued, through one channel or another, by the crown, by virtue of original authority which Parliament has never sought to take away, is listed separately in the annually published volume of Statutory Rules and Orders A good illustration is the orders issued by the Colonial Office for colonies which have no legislatures

passing the said 43 acts, the departments were issuing no fewer than 1,349 different statutory rules and orders.[1] The upshot is that in numerous broad fields, *e.g.*, agriculture, industry, poor relief, public health, and education, regulation today is far more largely by administrative rules and orders than by statute—and not merely "orders-in-council" but rules laid down by particular executive departments, by officers or branches thereof, or even by local (county or borough) authorities to which the rule-making power, in lesser matters, has trickled down from above. So far, indeed, has the delegation of legislative power been carried that Parliament is found not only leaving it to administrative authorities to supplement and fill out the broad terms of statutes as enacted, and sometimes to fix the dates at which various portions of statutes shall take effect, but even in occasional instances authorizing ministers or departments to modify (usually within some stipulated bounds) the terms of statutes according as they may find "necessary and expedient." Forty years ago, the enactment of "skeleton" legislation by Parliament, with the intention that it should be filled out and applied by administrative officials, was regarded as peculiarly characteristic of France, Italy, and other Continental countries. It still is prevalent enough there. But nowadays it is almost, if not quite, as common on the other side of the Channel. Even in the United States, where, in pursuance of the principle of separation of powers, it is expressly stipulated that all legislative powers granted in the national constitution shall be vested in Congress,[2] and where, consequently, the delegation of such power is at least theoretically impossible, administrative legislation—in the form of executive orders issued by the president and of rules and regulations made both by the president and by higher officials of the executive departments—has assumed a high degree of importance.[3] In Britain, there is no constitutional obstacle; and delegation—frank and unashamed, as contrasted with roundabout and more or less disguised delegation in the United States—is going on in steadily increasing amount.

[1] In a still more recent year (1936), the number of such rules and orders was 1,417. Brought together, they filled two stout volumes.

[2] Art. 1, § 1.

[3] See J. A. Fairlie, "Administrative Legislation," *Mich. Law Rev.*, Feb., 1920; J. Hart, *The Ordinance-Making Powers of the President of the United States* (Baltimore, 1925), J. P. Comer, *Legislative Functions of National Administrative Authorities* (New York, 1927); and F. F. Blachly and M. E. Oatman, *Administrative Legislation and Adjudication* (Washington, 1934). The courts, of course, sometimes overrule the attempted delegation of legislative powers as in the case of the National Recovery Act of 1933.

REASONS FOR DELEGATION

If anyone ever supposed that powers of a legislative nature could be kept exclusively in the hands of Parliament, Congress, or any other important legislative body, such a view is entirely untenable now. To start with, no legislature—certainly not the British Parliament—has time in which to consider, or even to act perfunctorily upon, all of the multifarious questions that must somehow be settled as the day-to-day business of administration proceeds. Often as not, the legislature is not in session when decisions must be reached. Sometimes, too, the legislature cannot agree, and finds it easiest to pass along a given problem to other hands. Most important of all, the matters to be regulated are increasingly complicated and technical, quite beyond the knowledge and experience of the average run of legislators, and capable of being dealt with intelligently only by administrators and technicians on the basis of first-hand experience and scientific expertness, and under circumstances such that if rules adopted do not work out as expected, they can more easily be modified than if formal legislation were required. Under these conditions, Parliament perforce contents itself time after time with statutory enactments laying down broad principles, policies, and objectives, leaving it to the king-in-council or to an appropriate department to supplement them with orders and regulations.

PROS AND CONS OF THE MATTER

Although by no means a new phenomenon, the practice of delegation has so grown in recent times as to arouse misgivings and draw forth some vigorous criticism. Parliament, it is charged, is gradually restoring to the crown by statute the arbitrary powers of which earlier parliaments stripped it, and thus, whether realizing it or not, is abdicating its own proper functions. Urging it along this perilous road are the ministers, who originate most of the important public measures, who have a definite interest in obtaining as much freedom as possible for the executive authorities to legislate independently, and who are not above slipping into bills clauses, frequently unnoticed by anyone else, conferring the coveted powers. Few members of Parliament, we are told, have any real understanding of how far matters have actually gone. Sticklers for the preservation of full parliamentary powers, and for the principle of separation, can undoubtedly make out a rather sharp indictment.

There are, however, other things to be said. In the first place, notwithstanding delegation, Parliament remains the ultimate authority. Neither king-in-council nor any department has original, independent law-making authority enabling it by means of rules and orders

to override the will of Parliament on any matter on which the latter chooses to take a position. "All rules," the judicial committee of the privy council has said, "derive their validity from the statute which creates the power [to make them], and not from the executive body by which they are made." [1] In the second place, many, and indeed an increasing proportion of, statutory rules and orders must be laid before Parliament; and certain ones (including all "provisional orders") become finally valid and effective only upon being confirmed by resolution passed by both houses. This check is often more a matter of form than anything else, say the objectors, and rightly. Nevertheless, the power of veto is there, to be exercised whenever desired.[2] Finally, orders and rules enjoy no such immunity from judicial review as do statutes. No court will hold any act of Parliament *ultra vires;* but any judge, high or low, before whom a case is brought turning on the enforcement of an administrative rule or order may inquire into the authority by which the rule or order was issued and, upon finding it wanting, decline to apply the order to the case before him.[3] Even war-time orders-in-council issued under the broad authority of the Defense of the Realm Acts of 1914–15 fell to the ground in this way.[4]

[1] The Zamora (1916). See D. L. Weir and F. H Lawson, *Cases in Constitutional Law*, 66–70.

[2] It has been proposed to set up committees in both houses of Parliament charged with reporting on (1) every bill delegating legislative power and (2) all regulations made in pursuance of such delegation. No action of the kind has, however, been taken—chiefly because of the dislike of the ministers and civil servants for the plan.

[3] The only exception arises in scattered instances, *e.g.*, the Poor Law Act of 1927, in which regulations are given immunity by provision of the covering statute that they "shall have effect as if enacted in this act." The significance of this exception is, however, lessened by a ruling in *Ex parte* Yaffe (1930) that the provision does not compel the courts to accept such legislation unless it conforms to the act.

[4] Interest in the subject of administrative legislation was raised to a lofty pitch by a challenging book published at London in 1929 by the Lord Chief Justice, Lord Hewart of Bury, under the title of *The New Despotism* (see especially Chap. vi). Just as this volume appeared, the Labor government set up a commission, under the chairmanship of the Earl of Donoughmore, to investigate both administrative legislation and administrative justice, and in 1932 this body presented a *Report of the Committee on Ministers' Powers* (Cmd. 4060), the second section (pp. 8–70) of which surveys the growth and character of administrative legislation, in general approvingly, although with suggestions for needed safeguards (for portions of this discussion, see R. K. Gooch, *Source Book*, 157–170). J. Willis, *The Parliamentary Powers of English Government Departments* (Cambridge, Mass., 1933), is an admirable treatise on the subject; and C. M Chen, *Parliamentary Opinion of Delegated Legislation* (New York, 1933), brings to light cross-currents of thought in Parliament concerning it. An older, but still standard, work is C. T. Carr, *Delegated Legislation* (Cambridge, Eng., 1921), and a useful brief survey is J. A. Fairlie, *Administrative Procedure in Connection with Statutory Rules and Orders in Great Britain* (Urbana, 1925). On delegation of powers in general, see article by E. Bontecue in *Encyc. of the Soc. Sci.*, V, 65–67.

DEVELOPMENT OF ADMINISTRATIVE ADJUDICATION

Hardly less interesting than the growth of administrative legislation is the development of what may, by analogy, be termed administrative adjudication. To be sure, there never has been, and never will be, any clear line of demarcation between administrative functions and judicial functions, long before our own day, administrators judged and judges administered. But the point is that, largely as a result of the social legislation of the past half-century, the judicial activities of administrative authorities in, or under the control of, the executive departments have enormously increased, not by accident, but by deliberate provision made in parliamentary statutes For example, the housing acts make the Ministry of Health the appellate body in regard to a great series of important matters closely affecting the rights of owners of slum property and workmen's dwelling houses, and, the department having laid down requisite rules on the subject, appeals are decided by its officials in accordance with them and can be carried to no court of law. Again, the Board of Education hears and gives final decision upon appeals turning upon essentially judicial questions arising between local educational authorities and the managers of "non-provided," *i.e.*, denominational, schools. The Ministry of Transport similarly disposes of appeals in regard to the granting of various kinds of licenses and in respect to the supplying of electrical power; and the Home Office exercises numerous functions of a judicial nature, involving intricate questions of law and fact, "ranging from the decision as to whether a man is or is not an alien, and if an alien, of what nationality, to the commutation of the death penalty in capital offenses." [1] Hardly any important department—indeed, hardly any major branch of a department—fails in these days to have a wide range of judicial powers which it exercises under statutory authority and in complete independence of the courts of law.

DIFFERENCES OF OPINION HERE ALSO

Those who object to the growing exercise of legislative power by administrative authorities usually object even more strongly to "administrative justice." Under the fundamental English principle of the rule of law,[2] they say, it is the right of every British subject to have disputes of a legal nature in which he is involved heard and decided by the regular judicial courts As things have been going, however, he is increasingly likely to find that when he desires to contest a rule or

[1] W. A. Robson, *Justice and Administrative Law* (London, 1928), 24

[2] Cf p 39 above.

decision of an administrative authority, in defense of what he regards as his rights or interests, the matter must be heard and settled, not by a regular judicial court, but by an official, or perchance by a quasi-judicial body, within the department under which the question has arisen. He is likely also to encounter procedures very different from, and more summary than, those of the regular courts. As a rule, he may not appear in person, be represented by counsel, or produce evidence, and if the case goes against him, he sometimes has no opportunity to appeal, unless perhaps only to a higher administrative authority. All this, it is charged, is out of line with historic and fundamental English principles—an unhappy development by which the bureaucracy is gaining the whip-hand over the judiciary.

Here again, there are, of course, arguments in rebuttal: first, that what is complained of is nothing new, since administration and justice have always been to a considerable extent commingled; second, that the swift expansion of social legislation in the past half-century has made the growth of judicial functions in the hands of administrative authorities necessary and inevitable; third, that in wielding such powers these administrative authorities have achieved, and are achieving, socially desirable ends which the courts of law as at present constituted are not always prepared or disposed to serve; and fourth, that the administrative tribunals are easier of access than the ordinary courts and their procedure less technical, less expensive, and more speedy. The problem is an intricate one—too much so to be dealt with adequately here. It will challenge attention increasingly, however, not only in Britain, but also in the United States, where—once more notwithstanding our vaunted separation of powers—it has presented itself in many guises and forms.[1]

[1] Lord Hewart's *The New Despotism* is devoted especially to this subject, and section 3 (pp. 71–118) of the *Report of the Committee on Ministers' Powers* considers it concisely (reprinted in part in R. K. Gooch, *Source Book*, 399–414). The Chief Justice finds administrative justice little better than "administrative lawlessness", the Committee finds nothing radically wrong with it, but, as in the case of administrative legislation, suggests some desirable safeguards. W. A. Robson, *Justice and Administrative Law* (cited above) is a first-rate treatise, with Chaps. I, III, and VI especially to be recommended. On developments in the United States, see F. F. Blachly and M. E. Oatman, *op cit.*, and J. Dickinson, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, Mass., 1927). Blachly and Oatman found in 1934 approximately 60 federal agencies having powers of administrative adjudication. The number of state agencies having such powers is, of course, vastly larger.

CHAPTER VII

The Permanent Civil Service

THE work of the government would never be done if there were only the secretaries of state and other heads of departments, the presidents of boards, parliamentary under-secretaries, junior lords, and civil lords—in other words, the ministers—to do it. These people cannot be expected to collect taxes, audit accounts, inspect factories, take censuses, to say nothing of keeping books, delivering mail, and carrying messages. Such manifold tasks (many of them purely clerical, but many others not at all so) fall, rather, to the body of officials and employees known as the permanent civil service. The ministers number, as we have seen, around 65; the permanent civil service numbers more than 300,000,[1] and it is the latter great body of men and women—for upwards of a fourth are females—that translates law into action from one end of the country to the other and brings the national government into its daily contacts with the rank and file of the citizenry. It is likewise this reservoir of experience and knowledge that furnishes the cabinet and Parliament with much of the information required in shaping and enacting policies on a multitude of subjects, being itself entrusted in ever-increasing degree with the completion of loosely woven statutes by means of department-made rules and applying them to concrete and changing circumstances beyond the ken of the legislators at Westminster. Less in the public eye than the ministry, this army of functionaries is not a whit less necessary to the realization of the purposes for which government exists. Indeed, there are those who consider government as, in essence, simply administration; and while there is a bit of exaggeration in this, there can be no denying that without the all-pervading and unremitting work of the civil servant, government would be only a jumble of rules and regulations suspended in mid-air, without force or effect upon the people.[2] Our next concern must therefore be to see how

IMPORTANCE

[1] Exclusive of about 125,000 industrial workers. Cf p. 126 below.

[2] "I have a shrewd suspicion," Joseph Chamberlain once said to a group of civil servants, "that you could do without us. But I have an absolute conviction that we could not do without you." C W Boyd (ed), *Mr Chamberlain's Speeches* (London, 1914), II, 7.

the permanent service is recruited, classified, controlled, disciplined, compensated, and fitted into the general scheme of things.

MINISTERS AND PERMANENT CIVIL SERVANTS CONTRASTED:

1. AS TO POLITICAL STATUS

Certain sharp distinctions between ministers and permanent civil servants at once attract attention. The first turns on the fact that the minister is a *political* official while the civil servant is not. Most ministers belong to the House of Commons, to which they have been elected as party men; if in the cabinet, they are likely to be recognized party leaders; in any event, they bear a party label and remain in office only so long as their party stays in power.[1] The permanent civil servant, on the other hand, derives his status mainly from the fact that he is non-political. He is not permitted to be a member of the House of Commons, or even to become a candidate for a seat without first resigning his civil service post. He may not make a political speech, print a partisan article or tract, edit or publish a party newspaper, canvass for a party candidate, or serve on a party committee. He may not seek to wield partisan influence in any way whatsoever except by going quietly to the polls and casting his ballot. Indeed, in times past revenue collectors, police, and one or two other groups of public employees have actually been disfranchised, although none is so penalized today. Hedged about by multiplied parliamentary statutes, orders-in-council, and restraining rules laid down by the Civil Service Commission, the civil servant (if he lives up to what is expected of him) merely watches the tide of political life flow past him without ever dipping into it except to vote. The theory is that subordinate employees of the state—having to do, not with the control of policy (however much they may, in point of fact, contribute indirectly to policy-making), but only with executing the laws and transacting the public business—ought to be in a position to work with the government of the day in full loyalty, consistency, and sincerity, regardless of which party is in power, and that they could not do this if they were to take an active and public part in favor of one party and its candidates as against another.

2. AS TO TECHNICAL EXPERIENCE

There is another way in which ministers and permanent civil servants differ. The former are, in the main, amateurs, while the latter are, or are in process of becoming, experts. Anyone who has read what has

[1] The situation is, of course, somewhat different when a "coalition," or "national," government is in office, *e g*, since 1931. Even then, however, ministers are selected with reference to their party status and are certainly "political."

already been said about the ministers will understand why they are, and with rare exceptions must be, amateurs. They are appointed with some regard, of course, for their personal aptitudes, but often, if not usually, for reasons that have little connection with the nature of the work to be performed in their particular departments; frequently they have had little or no experience with governmental administration in any form. The departments over which they find themselves placed have in most cases come to embrace so many different services that no person could possibly qualify as an expert in them all. While in office, ministers, furthermore, must devote so much of their time to cabinet, parliamentary, party, social, and other activities outside of the fields assigned them that they can in fact learn little about their departments except on very broad and general lines. Not infrequently they are shifted from one post to another, and in any event they enjoy only the precarious, and usually rather brief, tenure which the political character of their positions entails. Merchants, lawyers, country squires, professional politicians, trade union organizers, with an occasional journalist and university professor—these, rather than permanent under-secretaries, assistant under-secretaries, and bureau chiefs who have risen from the ranks, are the materials of which ministries are made. Ministers are generally laymen, and make no pretense to being anything else.

SHOULD THE MINISTERS BE EXPERTS?

The apparent incongruity of such a state of things has stirred no small amount of ridicule and complaint. "We require," says one critic, "some acquaintance with the technicalities of their work from the subordinate officials, but none from the responsible chiefs. A youth must pass an examination in arithmetic before he can hold a second-class clerkship in the Treasury, but a Chancellor of the Exchequer may be a middle-aged man of the world, who has forgotten what little he ever learnt about figures at Eton or Oxford, and is innocently anxious to know the meaning of 'those little dots,' when first confronted with Treasury accounts worked out in decimals. A young officer will be refused his promotion to captain's rank if he cannot show some acquaintance with tactics and with military history, but the Minister for War may be a man of peace—we have had such—who regards all soldiering with dislike, and has sedulously abstained from getting to know anything about it." [1] In France and other Continental states, it has been not uncommon to put military and naval men in charge of the war and marine ministries, and even

[1] S Low, *Governance of England* (rev. ed., 1914), 201–202.

in the United States there has been a growing demand that the persons whom the president places at the head of at least a few of the executive departments, *e.g.*, Agriculture and Labor, shall have had professional experience related to the work which they will be expected to supervise.

REASONS WHY THE PRESENT PRACTICE IS BEST

There is no gainsaying that, other things being equal, the department head who is well informed on the work to be carried on under his direction is to be preferred. But this does not mean that he can, or should, be expected to qualify as an expert or technician. Dozens of more or less related, but different, activities are to go on simultaneously in the department, each requiring a high order of technical proficiency. Neither the minister in charge nor any other man can be a master of all; and so far as the minister is concerned, it is unnecessary that he be a master of any, because—and it cannot be too strongly emphasized—his business is not to do the work of the department, but only to help frame general policies and see that they are carried out by the staff employed for the purpose. Indeed, there are strong reasons why it is better for him to be a layman, brought in from the outside. He must be able to see the department as a whole and in its relations to other departments and branches of the government. He must have a sense of proportion and values requisite to guide him in keeping the department within its proper sphere. He must serve as the intermediary between the department and the House of Commons, keeping the one in touch with public opinion and the other informed on administrative needs and problems. Though war minister, he must have the interests of more than the military men at heart; though minister of agriculture, he must serve others besides the landowners. These larger things he would be less adapted to do if he had grown up in the department and had only a departmental point of view. On general principles, too, it is usually a good thing to have the work of experts supervised by laymen. If the supervision is at all tactful and sympathetic, less friction is likely to result than where experts are set to supervise experts.[1]

[1] For statements from high sources defending the existing practice, see Ramsay MacDonald, *Socialism and Government* (London, 1909), II, 34–35, and S. and B. Webb, *A Constitution for the Socialist Commonwealth of Great Britain*, 66–68. Cf. H. J. Laski, "The Limitations of the Expert," *Harper's Mag.*, Dec., 1931. "Sir William Harcourt, once asked whether the government of England would not be improved by being entrusted entirely to the permanent officials, replied, 'For six months, England would be the best governed country in the world. Then you would see every government official hanging to a lamp-post in Whitehall.'" R. L. Buell (ed.), *Democratic Governments in Europe* (New York, 1935), 64.

RELATIONS OF MINISTERS WITH THEIR SUBORDINATES

The outstanding feature of British executive and administrative organization is, therefore, the association together of (1) an amateur, lay, political, non-permanent, directing body of officials, and (2) an expert, professional, non-political, permanent, subordinate staff. "The former," as an American scholar writes, "provides the democratic element in administration; the latter the bureaucratic. Both are essential—one of them to make a government popular, the other to make it efficient. And the test of a good government is its successful combination of these two qualities." [1] The relations of the two elements, *i.e*, ministers and subordinates, with each other in the day-to-day workings of a department vary with the personalities and circumstances involved, but must necessarily be intimate and continuous. As spokesman in the department for the cabinet and Parliament, the minister directs and instructs, to a degree, he determines policy and imposes it upon those under him. On the other hand, as an amateur with little time for delving into the minutiae of department business, he cannot go far in any direction without assistance from the experts. On them he must rely for information about matters of which he knows little or nothing, from them he must seek advice; from them, indeed, he must continually accept guidance.[2] Well aware of their own superiority in experience, and sometimes in ability as well, permanent under-secretaries and other members of the permanent staff have no hesitation about putting forward their own suggestions, arguments, and admonitions; and as a recent English writer observes, the minister will, "in ninety-nine cases out of a hundred, simply accept their view, and sign his name on the dotted line." [3] Of course, no minister ever acknowledges any *obligation* to accept and act upon the views of his subordinates, however urgently pressed. It is he, not they, who will have to justify to the cabinet whatever decisions are made, and also bear responsibility for them on the floor of an inquiring, and perhaps censorious, House of Commons, and the last thing that he would surrender would be the right to make the decisions himself. If things go well, he gets the credit, if ill, he shoulders the blame. So far as responsibility goes, the minister is the department. Nevertheless, to a far greater

[1] W. B. Munro, *The Governments of Europe* (3rd ed.), 117

[2] Bernard Shaw's scoffing remark in the preface to his *The Apple Cart* that "the nearest thing to a puppet in our political system is a cabinet minister at the head of a great public office," while of course an exaggeration, nevertheless contains no small amount of truth

[3] R. Muir, *How Britain Is Governed* (3rd ed.), 56

extent than is commonly appreciated, the skilled and permanent service contributes to the shaping both of departmental and of broader national policy. The real authorship of many a bill introduced and pushed in Parliament by the ministers is to be sought, not among the ministers themselves, but among their subordinates in the departments.[1]

"CIVIL SERVICE REFORM"

A moment's reflection on the matter would suggest that, while in the nature of things the political, ministerial members of the public service must be selected in quite a different way, the great mass of non-political, professional, permanent officials and employees might very properly be recruited on the basis of knowledge and capacity as tested in formal examinations; and the next outstanding aspect of the permanent service to be noted is the wide application of what we in America are accustomed to call the "merit" principle. Like ourselves, the British people came by this plan only after a long fight for "civil service reform." They attained it, however, a generation earlier than we, and the victory of the cause in their country did much to promote the hard-won, but substantial, triumphs which it has achieved on this side of the Atlantic.[2] In Britain, as with us, the fight had to be made against various flagrant and insidious forms of what is commonly known as "patronage." Government in Britain in the eighteenth and earlier nineteenth centuries was, in all of its phases, decidedly aristocratic. Legislation at Westminster was chiefly in the hands of the leading members of a few governing families; justice and local government were carried on almost entirely by propertied but unpaid and often inefficient justices of the peace; and the national administration was entrusted mainly to persons who got their places by some sort of favoritism rather than as a reward for possessing any particular capacity or competence. Many, if not most, appointees to administrative posts not only were amateurs, like the ministers, but had no claims whatever to preferment other than that they were importunate constituents of influential members of Parliament—perchance useful supporters at election time. Many were younger sons of powerful landholders or politicians; many were needy relatives or other more or less unpromising members of a magnate's

[1] For an excellent detailed discussion of this general matter, see C Aikin, "The British Bureaucracy and the Origins of Parliamentary Policy," *Amer. Polit. Sci. Rev.*, Feb. and Apr., 1939.

[2] Thus the important legislation known as the Pendleton Act, in 1883, was helped along appreciably by the publication in 1880 of a book entitled *The Civil Service in Great Britain*, by Dorman B Eaton, an ardent reformer whom President Hayes commissioned to study the advances made in Great Britain up to that point.

entourage; many performed public duties on only a part-time basis, as a sort of side-line.[1]

FORMER PREVALENCE OF PATRONAGE

"Clean sweeps," of the sort that came to be the fashion in the heyday of the American spoils system, were, indeed, very rarely indulged in. The Englishman thought of a man, once in a public office, as having somewhat of a vested right to it. There was no such fear of entrenched office-holders as found frequent expression in America, especially in Jacksonian days, besides, under a cabinet system, with a change of ministers possible at almost any moment, the principle of rotation, if allowed to dominate, would, as any sane man could see, keep the whole governmental system constantly on the brink of chaos. Nevertheless, there were some removals on partisan and personal grounds; and when desirable places fell vacant or new ones were created, the appointments almost invariably went to sons of the aristocracy or other place-hunters selected for reasons having little or nothing to do with competence. Promotions, too, were largely a matter of political or personal influence.[2]

THE PROCESS OF REFORM

High-minded heads of departments protested against a system which swamped the services with inefficient and lazy employees, and lay critics like Carlyle poured out the vials of their wrath upon both the purveyors and the beneficiaries of patronage. Not until 1833, however, was it found possible to make a start in the direction of reform, and then only in a very modest fashion in connection with appointments in British India. Not until past the middle of the century, following the submission of a challenging report by a Treasury committee, could anything be done to improve matters in the services at home.[3] Even then, the country did not go over to a merit system immediately, or by a single leap. Nevertheless, in 1855 an order-in-council created a civil service commission of three members charged

[1] John Bright once referred to the civil service of his time as "the outdoor relief department of the British aristocracy" See the unpleasant picture presented in a document reprinted in N L Hill and H. W. Stoke, *op. cit*, 86–87.

[2] The general state of the service at the middle of the nineteenth century is reviewed in R Moses, *The Civil Service of Great Britain* (New York, 1914), Chap 1 The situation is portrayed half-humorously in Anthony Trollope's novel, *The Three Clerks;* and devotees of Dickens will have no difficulty in recalling the "circumlocution office" of *Little Dorrit.*

[3] The report proper was issued late in 1853; with comments by various eminent people, it was presented to Parliament in 1854 under the title of *Report and Papers Relating to the Reorganization of the Civil Service.* Macaulay tells us that, when first published, it was laughed at in the clubs and had little support in the House of Commons. It is, nevertheless, the foundation of Britain's excellent civil service system today For an account of it, see R Moses, *op cit*, Chap. iii.

with administering examinations to candidates in junior positions in all departments; the pass examinations introduced at the outset presently gave way to competitive tests; and a Superannuation Act of 1859 imparted a powerful impetus by providing that no person thereafter appointed (with certain exceptions) should be regarded as entitled to a retirement pension unless he should have been admitted to the service with a certificate from the commissioners. Finally, in 1870, an epoch-marking order-in-council completed the edifice by making open competitive examinations obligatory practically throughout the service. Since that time, the merit plan of recruitment and promotion has applied, speaking broadly, to the whole body of national administrative officers and employees except only employees with purely routine duties at the bottom of the scale and a handful of officers at the top—chiefly the ministers—who have to do directly with determining policy, and who accordingly are properly kept on a different basis.

One will not be surprised to learn that every step in the British reform was resisted stoutly by politicians and others who had something to lose by a change, and that during its first 20 years the Civil Service Commission was the object of almost continuous criticism and attack. There never was really serious danger, however, of a reversion to the earlier scheme of things; and from 1870 onwards it was a matter merely of studying and experimenting with modes of bringing the system up to the desired efficiency and keeping it abreast of the times. To this end, searching inquiries were made by successive commissions, notably in 1875, in 1884–90, in 1910–14, in 1918, and in 1929–31;[1] and large numbers of orders-in-council were issued, *e.g.*, one of 1910 repealing previous orders and consolidating those remaining, and another of 1920 largely superseding the measure of 10 years before. In the whole process, Parliament—never very enthusiastic on the subject—played a distinctly minor rôle; indeed, the fashion in which the two houses kept their hands off the problem and allowed the entire present-day merit system to be built up upon the basis of executive investigations, plans, and orders may well be cited as an illustration of that legislative abstention from direct control of administration which so sharply differentiates methods at Westminster from those at Washington. The executive authorities, standing closer to the realities of the problem, quite outran parliamentary,

[1] The report of the Tomlin Commission, submitted in 1931 (Cmd. 3900), was particularly significant because of dealing with many newer post-war phases of the service. For brief comment, see L. D. White, "The British Royal Commission on the Civil Service," *Amer. Pol. Sci. Rev.*, Apr., 1932.

if not also popular, sentiment on the subject, and, almost before the country was aware of what was happening, gave it the first truly expert and professional civil service known to the Western world.[1]

PRESENT EXTENT OF THE SERVICE

The broadening and deepening of the range of government activities in the last hundred years is reflected strikingly in the creation of new executive departments and offices, as outlined in the preceding chapter. It is similarly evidenced by the growth of the civil service. In 1832, the total number of civil servants—counting all members of administrative and clerical staffs, including postal officials, but excluding laborers (for whom there are no figures)—was 21,305.[2] By 1851, the figure had risen to 39,147, and by 1891, to 79,241; in 1914, on the eve of the World War, it was 280,900, in 1922, after a considerable decline from the peak reached during the War, it was 317,721; at the present day, it is well above 300,000, exclusive of some 125,000 laborers and other employees who, although frequently included in the statistics cited, are not "permanent," nor yet civil servants in the stricter meaning of the term. Of the present total, upwards of two-thirds are employed in carrying on the varied operations of the Post Office (including the telegraph and telephone services); of the remaining third, approximately half are engaged in work in and about Whitehall, the focal center of the administrative system, and the other half are in service elsewhere throughout the country and in foreign lands. More than 23 per cent of the whole number are women.[3] As compared with France—a country of approximately the same population—Great Britain has a comparatively small force of national civil servants, for the reason that, government being far less centralized, important groups, *e.g.*, school teachers, which in France belong to the national service function in Britain under the counties and boroughs only. Even so, and taking no account of the armed forces, one Britisher out of every hundred is on the national pay-roll.

CLASSIFICATION OF EMPLOYEES

In earlier days, little or no attempt was made to group the members of the civil service into definite classes. After the reform of 1870, however, it was found desirable to distinguish between the higher posts, involving discretionary powers and requiring a thorough education,

[1] Closely rivalling it, however, was the civil service of Prussia. See pp. 756–758 below.

[2] To avert possible confusion, the reader may be reminded that only the national civil service is under discussion here. On the "municipal service," as Englishmen commonly term the employees of counties and boroughs, see pp. 360–361 below.

[3] Hilda Martindale, *Women Servants of the State, 1870–1938; A History of Women in the Civil Service* (London, 1938).

and inferior positions involving only work of a clerical nature; and gradually a scheme of classification into first or higher division clerks, second division clerks, assistant clerks, boy clerks, and women clerks was worked out, although promotion from one class to another was rare and the articulation of the different parts of the system was generally unsatisfactory. A reorganization which was definitely in prospect at the time when the World War broke out was naturally delayed, but it was actively undertaken in 1918, and by 1922 it had been carried out in most of the important departments. A description of the classification now prevailing would be excessively technical for our purposes. Suffice it to say that the present general (as distinguished from departmental) classes are: (1) "the brain of the service," a pivotal and directing administrative class (some 1,300), corresponding to the old first division, open alike to men and women, and recruited, at the ages of 22–24, by rigorous competitive oral and written examination from among candidates who are mostly graduates of high distinction from Oxford and Cambridge,[1] and whose testing is directed particularly to discovering intelligence, adaptability, and personality; (2) an executive class (some 4,350), doing the work of the supply and accounting departments and of other executive or specialized branches of the service, and recruited at the ages of 18–19 on the standard of a full secondary school course; (3) a much more numerous general clerical class, covering the lower range of the old second class (with the addition of the assistant clerks and the boy clerks), recruited at the ages of 16–17 on the standard of the intermediate stage of a secondary course, and subdivided into (a) the higher clerical class and (b) the clerical class proper; (4) a writing assistant class, recruited only (at the age of 16) from girls, and engaged in copying, filing, addressing, counting, and other simple and largely mechanical work; and (5) a class of typists and shorthand typists, also recruited exclusively from girls. Each class has a prescribed salary scale and definite standards for pay increase and promotion. Each is articulated reasonably well with a given level in the educational system of the country.

CONTROL BY THE TREASURY

Responsibility for the general administration of the civil service rests with the Treasury, aided by a civil service commission charged with maintaining standards and testing qualifications for appointment. The key position which the Treasury occupies among the executive departments—more particularly, the supervision which it wields over

[1] In general, the administrative class includes the permanent under-secretaries and all others who make important decisions and give advice to ministers.

their expenditures—would of itself entail a good deal of control over the conditions under which their work is carried on. But an order-in-council of 1920, consolidating a long line of previous orders, authorizes this purse-holding *pater familias* of the governmental system to "make regulations for controlling the conduct of His Majesty's civil establishments and providing for the classification, remuneration, and other conditions of service of all persons employed therein, whether permanently or temporarily"; and as a result, practically every phase of civil service organization and activity—the number and rank of civil servants in each department, salary bases and ranges, efficiency ratings, promotions, pensions, though not discipline—is subject to whatever degree of Treasury regulation the authorities of the department care to impose. Even rules and regulations for admission to the service as laid down by the civil service commissioners, including types, times, and places of examinations, are effective only when given Treasury approval; and altogether, characterization of the Treasury as "the employer of the civil service" is not far-afield Since 1919, Treasury control has been centralized in an "establishments department," each larger ministry having an "establishments" branch of its own for handling matters not requiring attention elsewhere, and the heads of these units forming a committee to advise and assist the central establishments department in the Treasury.[1] Since 1919, too, the Permanent Secretary of the Treasury has borne the significant title of "Head of the Civil Service."[2]

THE CIVIL SERVICE COMMISSION

The pioneer order-in-council of 1855 created a central board of examiners of three members, and to this day the authority which makes and executes rules for entry into the service has been His Majesty's Civil Service Commissioners, commonly referred to simply as "the Commissioners," or the Civil Service Commission. Appointed by the crown—which in practice means by order-in-council after the cabinet has duly consulted with the higher Treasury officials—the commissioners are usually persons of long experience in the service; and

[1] Under a presidential order of 1939, every executive department and independent establishment at Washington is required to have a division of personnel management, and the personnel directors heading these divisions, together with representatives of the Bureau of the Budget and the Civil Service Commission, form a central Council of Personnel Administration

[2] See T. J. Heath, *The Treasury*, Chap x "Treasury control," remarks a former Treasury official, "is something you live under, that you suffer from, that you profit by, and if you cannot define it, well—Lord Morley used to say that he could not define an elephant, but he knew it when he saw it, and you know Treasury control when you feel it." H Higgs, in *Jour. of Pub. Admin*, Apr, 1924, p 122.

they hold office until eligible for retirement under regular civil service rules. The most recent official definition of the duties of the Commission is contained in the order-in-council of 1920 already cited. In summary, they are: (1) to "approve" the qualifications of "all persons[1] proposed to be appointed, whether permanently or temporarily, to any situation or employment in any of His Majesty's civil establishments"; (2) to make regulations prescribing the manner in which persons are to be admitted to the civil establishments and the conditions on which the commissioners may issue certificates of qualification; and (3) to publish in the *London Gazette* notice of all appointments and promotions with respect to which certificates of qualification have been issued. As has been explained, the Commission's work is subject at all points to Treasury approval; and of course it must be understood that actual appointments are made, not by the Commission, but by the appropriate department heads, subject again to general Treasury control. The Commission has nothing to do with classification, promotions, salary ranges, or discipline. Its business is solely that of examination and certification. In all that relates, however, to this important function of recruitment, it wields an authority which is rarely overborne; and the scheme of examinations which it has built up is one of the outstanding features of the British administrative system.

METHODS OF RECRUITMENT

It must not be supposed that a single mode of recruitment is employed for all branches and grades of the service. Quite the contrary. In the first place, tests may be applied (1) by written examination, (2) by interview, the candidate conversing with a board of examiners, or (3) by a mixed method under which personal fitness is judged by means of interview and knowledge by written examination. In the second place, the competition may be held under regulations made by the Civil Service Commission and be open to all candidates who possess the qualifications laid down in the regulations; or it may be held under conditions prescribed by a department and restricted to candidates selected in advance by the department. To describe, one by one, the many kinds of tests employed is not feasible here; but something may well be said about the examination system in general, especially as found in those parts of the service in which recruitment is most fully controlled by the Commission.

NATURE OF THE EXAMINATIONS

Great changes have taken place in English civil service examinations since the time when Anthony Trollope, having failed at everything else

[1] With certain stipulated exceptions.

that he had tried, was admitted to the secretariat of the Post Office on the basis of a test which consisted in copying a newspaper article, in the course of which he misspelled several words and finally spilled ink on the manuscript! Furthermore, the English objective in examining for admission to the service is very different from the American. In this country, candidates for virtually all positions except those of a distinctly technical character are tested primarily to find out how well they are qualified to perform the duties of the particular position or type of position which they seek. There is one examination for people who are interested in becoming letter-carriers, another for those who would like a job at book-keeping, and so on all the way around. The examinations are specific, practical, non-academic, and to the average American it seems both natural and proper that they should be so. The English examinations, however, aim, not so much at finding out how well an applicant could presumably discharge the duties of a given post if he were appointed to it tomorrow, as at measuring his intellectual attainments, his qualities of mind, and his general promise for the future. Thus, candidates for admission to the administrative class are given the same examinations, whether they eventually find employment in the Treasury, in the Foreign Office, or in the Admiralty. The subjects in which they are examined are distinctly academic—including, in varying combinations, history, mathematics, ancient and modern languages, philosophy, economics, political science, natural science, and others—and are drawn almost entirely from the realm of the liberal, as opposed to the technical, studies. And the questions are of a sort which ordinarily can be answered only by an upper-group university graduate; indeed, most of them are furnished by Oxford, Cambridge, and other university professors.[1] To be sure, examinations for entrance into the next class below, *i.e.*, the executive, are easy enough to be passed by persons with a secondary-school education. Yet they, too, are of an essentially academic rather than "practical" nature; and even at a still lower level, a "female telegraphist"—so a recent examination paper reveals—must be able to show that she can give an account of the reign of Alfred the Great, compare the times of Elizabeth and Victoria, discourse on ocean currents, and compute algebraically the area of the face of a penny!

The English view of the matter is that it is desirable to get into the service people who, although they may at the moment know little or nothing about the duties of any particular position (their youth and

[1] Many specimen sets of questions are given in R. K. Gooch, *Source Book*, 198–223. Cf. N. L. Hill and H. W. Stoke, *op. cit.*, 90–93.

inexperience would, in fact, preclude such knowledge), nevertheless have education and capacity that will enable them to rise from lower to higher positions and to become increasingly useful servants of the state. Such people can be trusted to pick up in a very short time a sufficient knowledge of the special work with which they are to start. The main concern is that they—at all events, in the middle and higher levels—be the sort that will prove capable of going on, some of them up to the under-secretaryships and other important offices which the British permanent service includes. From this it follows that much emphasis is placed upon the civil service as a career. Rarely is it entered today except by persons who have decided to make it a life work, who accordingly have subjected themselves to the arduous discipline involved in carrying out the necessary preparations, and who come to the service as young men or women (in no case beyond 24 years of age) who have looked to this alone, and not as middle-aged persons who have tried a number of other things and failed.[1]

MERITS OF THE ENGLISH AND AMERICAN SYSTEMS

There is something to be said, of course, for both the American and British systems. The American is more democratic; it exacts little of the beginner in the way of knowledge, and it affords a haven for men and women of all ages who are presumably fitted to do some particular form of clerical or other work. This, however, is about all that can be said for it. The British system is less democratic. But it attracts to the public service men and women who, on the average, not only are younger and more energetic and flexible than American appointees, but far better fitted by education, and very likely by native capacity as well, to become progressively able, useful, and responsible servants of the state. The American service is crowded with people who are perhaps adequately qualified for the clerical work that they do—and which they will keep on doing to the end of their days—but lamentably barren of first-rate material for such higher posts as bureau chief and assistant secretary. Special efforts are now being made to attract them, but it is still a rare thing in this country for university graduates to take civil service examinations except as candidates for a relatively small number of technical positions.

[1] For an official statement of the English point of view, see *Report of the Committee . . .* [on Civil Service], Cmd. 8657 (1917), 10–13. The Tomlin Commission, which investigated civil service conditions and problems in 1929–31, found prevailing methods of recruitment generally satisfactory. It may be noted that while, in making appointments, war veterans receive preferential treatment in some grades of the service, the practice is not carried as far as in the United States.

PROMOTIONS

A corollary of the principle that new appointees to the service shall be persons of demonstrated capacity for growth is the consideration that the way must be kept open for them to mount in the scale as experience fits them for more important duties. This means a scheme of promotions conceived in the best interests of efficiency and morale. The arrangements that have been arrived at for the various grades of the British service are too varied and technical to be described here. But they provide, in general, for promotion (except in the lowest grades) on the basis of service records rather than—as frequently in the United States—on that of written examination, they are administered, not by the Civil Service Commission, but by the several departments, with the aid of departmental promotion boards and under Treasury supervision, and they are generally thought to give fairer and more satisfactory results than in any other country.

REMOVALS

As is suggested by the term "permanent civil service," non-political officers and employees, once appointed, remain in the public employ until they die, resign, are removed for misbehavior, or reach the age of retirement. There is, to be sure, no legal guarantee to this effect. Quite the contrary: except the judges and the Comptroller and Auditor-General, every officer under the crown—civil and military—serves only "during the king's pleasure"; so far as the law goes, any officer or employee (with the exceptions noted) may be dismissed at any time, with no reasons assigned, and, once discharged, a civil servant has no case in the courts for wrongful dismissal and damages. Promiscuous removals, however, never became the fashion, even when the abuse of patronage was at its height; and the custom which nowadays protects every permanent official's right to be retained in the service—up to the age of retirement, of course—as long as he behaves himself and does his work well is as scrupulously observed as any law on the subject could possibly be. Nothing would sooner discredit a ministry than any manifestation of a disposition to tamper with the securities and immunities of the permanent service.

PAY

A difficult but inescapable problem in any civil service system is that of pay. What shall be the relation between the rate of pay for civil servants and for persons engaged in comparable work in private employ? How shall a scale be arrived at which will be fair as between class and class within the service, and fair also to the taxpayers who must carry the burden? There was a time when the bulk of the state's work was done by persons who secured their positions through patronage, who were

frequently incompetent and negligent, and who—however they actually fared in particular cases—could hardly be regarded as having a claim to compensation on a basis fixed by market demand. Nowadays, however, the state seeks out the best talent available, competing for it with the professions and with private employers, and must expect to pay in reasonable accordance with the value of the work done or services rendered.

Mere acceptance of this situation does not solve the problem. On the one hand, civil servants are virtually assured of permanent employment; they have ample opportunities for promotion; they have a dignified connection, and are shielded from certain of the casualties of private employment. On the other hand, they are subject to special rules of decorum; they are denied some of the privileges enjoyed by other citizens, chiefly in the direction of political activity; they have no chance to acquire riches at an early age, or indeed at all; once in the service, they cannot leave it without sacrifice of their superannuation rights, or, having left it, return to it except under the most unusual circumstances. The principle which controls in the shaping of British policy on the subject is, in brief, that the state—like any other employer—must "pay whatever is necessary to recruit and to retain an efficient staff."[1] This means that, on the average, the pay must be a little better than in the general run of employments outside the service, and that it must be capable of occasional adjustment to changing economic conditions. For some years after 1920, pay was in accordance with a pre-war base rate, to which was added a bonus freshly adjusted every six months in accordance with the rise and fall of the cost of living. This flexible plan, however, led to disputes, especially during the period of falling prices after 1929, and it has now been abandoned. Except in the relatively few instances in which it is fixed by statute, the pay of all civil servants is determined by the department concerned, with authority in the Treasury to see that reasonable uniformity is preserved from service to service. Pay-cuts imposed in 1930 were restored four years later.

PENSIONS

Retirement and retirement allowances, or pensions, are regulated in their major aspects by acts of Parliament, but in detail by the Treasury, and the system is administered by Treasury commissioners. The normal retirement age is 60; retirement on a pension can take place before that age only upon presentation of a certificate of physical or mental unfitness; at that age, anyone may retire who desires to do so; and at 65, retirement

[1] These are the words of a special committee on pay in the civil service, reporting in 1923.

is compulsory unless the Treasury allows an extension, in an individual case, up to a maximum of five years. Contrary to the practice in France and the United States (national government), employees are not required to make a contribution out of their salaries toward the cost of the system; and, roughly, the pension received is two-thirds of the average salary earned in the last three years of service.

ORGANIZATIONS OF CIVIL SERVANTS

In these days of widespread and effective organization in industry, business, and politics, one will not be surprised to learn that in Britain as elsewhere civil servants, high and low, have formed themselves into unions and confederations for the promotion of their pecuniary and other interests. Trade unions among employees in private industry were legalized only in 1824–25, and similar organizations of civil servants became permissible only in the early years of the present century. More than half of the whole number of public employees, however, are now to be found in one or another of four major associations, of which three are federations of local or other societies having cognate interests. Furthermore, until 1927 such associations were free to affiliate with trade-union organizations outside, as well as inside, the public service; and most of the unions and federations became thus tied up, not only with the general national trade-union association, the Trades Union Congress,[1] but also with the Labor party. For organizations like the Union of Postal Workers, such relationships were altogether natural. Pay and working conditions in the service are governed very largely by the standards prevailing in private employment, and it is to the interest of the government workers to cooperate in any effort of private employees to raise wage levels and improve conditions.

RESTRICTIONS IMPOSED IN 1927

Such alliances, however, raise problems—in particular, that of the right to engage in strikes. The unionizing of government workers has been going on the world over, and the strike question never fails to come up. Various ways of handling it have been adopted In the United States, an act of Congress dating from 1912 recognizes the right of civil service organizations to affiliate with labor unions outside of the service, so long as such relationship does not entail any purpose or obligation to strike. In Germany, full rights of association and affiliation were recognized in the Weimar constitution, but again stopping short of the right to strike—even though some strikes actually took place. In Britain, an attempted general strike in 1926 brought the issue dramatically to the fore, and a great deal of argument, pro and

[1] See p 314 below.

con, took place. The Civil Service Clerical Association—the largest constituent association of the Civil Service Confederation—sounded out its membership by a referendum and obtained a majority opinion that, so far as that organization was concerned, its officers had no power to call out the members on strike and its policy of affiliation could not be construed to involve any obligation to support a strike. The Conservative government of Mr. Baldwin came to the view, however, that the affiliation of civil servants' organizations with industrial groups which accept the principle of the sympathetic strike and the "solidarity of labor" ought to be definitely banned; and Section 5 of a drastic Trade Disputes and Trade Unions Act of 1927, passed in a state of public temper rare in Great Britain, not only prohibited civil servants from being members of any trade union unless the body is confined to persons employed under the crown and is independent of any outside trade union or federation of trade unions, but forbade any civil servant organization to be associated, directly or indirectly, with any political party. The measure was opposed vigorously by the civil service organizations, and by labor interests generally, as constituting an unnecessarily drastic action induced by sheer panic. Nevertheless, it prevailed, and not only were all civil servants who individually belonged to outside unions (some 137,500) compelled to give up their membership, but all organic relations of the civil servant organizations with the Trades Union Congress and the Labor party were brought to an end. Early in 1931, the second Labor government sponsored a bill repealing the much-debated Section 5. Other matters, however, pressed more urgently, and eventually the effort was given up. No doubt there will be further controversy on the subject. But at present it seems not unlikely that complete segregation of civil servant organizations from other unionism, and from partisan connections as well, will prove to have been written permanently into the nation's civil service law.[1]

WHITLEY COUNCILS IN THE CIVIL SERVICE

A grievance of civil servants often voiced in earlier days was that they had no opportunity to participate in making the rules and determining the conditions under which they worked. They could, it is true, present memorials and petitions, which were pre-

[1] Organizations of civil servants in the United States (for brief comment, see F. A. Ogg and P. O. Ray, *op. cit.*, 6th ed., pp. 310–312) are, of course, actively affiliated with the American Federation of Labor or the Congress for Industrial Organization, but on the assumption that they will not thereby be drawn into any commitments or activities having to do with strikes. The best account of unionism in the British civil service is L. D. White, *Whitley Councils in the British Civil Service* (Chicago, 1933), Chaps. xii–xiii, also Chap. xiv on the general strike of 1926 and Chap. xv on the legislation of 1927.

sumed to receive respectful attention from department heads and from the Treasury. But there was no provision for systematic discussion of and cooperative action upon civil service matters in joint committees or other agencies representing both officials and staff. This situation has now been remedied by the interesting device of "Whitley councils." In the autumn of 1916, when war-time industry was menaced by exceptionally serious unrest among the workers, a Ministry of Reconstruction committee, with J. H. Whitley (afterwards speaker of the House of Commons) as chairman, was set the task of working out ways of improving the relations of employers and employed; and in the following year a report submitted by this agency was adopted by the cabinet and urged upon employers and work-people alike as embodying a promising plan for the reorganization of industry. The essence of the scheme was a system of national, district, and works councils or committees, to include equal numbers of representatives of capital and of labor,[1] and to be charged with "discussion about and adjustment of" industrial conditions, subject to the superior authority of the trade unions and employers' associations. No legislation made the formation of such councils mandatory, the government merely recommended the plan and left operators and workers to adopt it in so far as they liked.[2]

In the domain of private industry for which it was devised, the scheme fell short of fulfilling the most ardent expectations, but nevertheless so far justified itself as apparently to have become a permanent feature of the nation's industrial order. Not only so, but in the civil service, to which there was originally no intention of applying it, it has taken root and has worked considerable improvement. Impelled by the rising cost of living, and stirred by the plans of the Treasury to substitute an eight-hour for a seven-hour day, the civil servants demanded that they, equally with employees in private industry, be admitted to the benefits of the arrangement, and in 1919 the Whitley system was introduced rather generally throughout the service. The machinery as it now stands consists of (1) works committees (sometimes called district and office committees) organized in government shops, arsenals, dockyards, and the like; (2) departmental councils (some 70 in number), varying somewhat in character from department to department, but each containing equal numbers of official and staff representatives;[3] and (3) a national

[1] By agreement, representatives of the government also.

[2] For the plan, see *Parliamentary Papers*, Cmd 8606 (1917)

[3] In the case of departments having staffs scattered throughout the country, provision is made for district or local committees

council of 54 members, half appointed by the Chancellor of the Exchequer to form the official side and half by the civil service associations, grouped in certain ways, to form the staff side. Practically all civil servants are nowadays represented in both departmental and national councils; and in most of the departments, as well as more broadly upon national lines, much useful work has been done. It is the business of the councils to consider matters relating to recruitment, hours, promotion, tenure, discipline, and remuneration; to devise ways of better utilizing the training and experience of the staff; to encourage the further education of staff members; and to propose remedial legislation. Many decisions arrived at can be put into effect by simple council agreement, although naturally some, by their nature, require action by the department head, by the Treasury, or even by Parliament. It is often charged that the official side enjoys the greater power—even that, in some cases, it is arbitrary and despotic. It has the unquestionable advantage of knowing that upon any matter upon which agreement cannot be reached its views will prevail; and, as a recent writer has warned, the employee side, speaking generally, must not expect too much. Experience of more than 15 years with the system has, however, gone far toward substituting for the relationship of master and servant that of copartnership, and has, accordingly, helped appreciably to bring the service into a more contented frame of mind. The royal commission which most recently studied civil service matters (in 1929–31) had no doubt that the scheme should be continued. Before the rise of the Hitler dictatorship, Germany had somewhat similar arrangements; France and the United States (except in a few special instances in the latter country) have thus far had nothing of the kind.[1]

CRITICISMS OF THE SERVICE

Students of that increasingly important subject, comparative administration, concur in giving the British civil service an exceptionally high rating. This does not mean that it is perfect; and if evidence were required that Englishmen themselves do not regard it as such, it could readily be found in the numerous official investigations of the system which, as mentioned above, have been made in the past 30 or 40 years.[2]

[1] The principal work on the council system is L. D. White, *Whitley Councils in the British Civil Service* (cited above), especially Chaps. i-xi, xvii-xviii. Cf. J. H. Macrae-Gibson, *The Whitley System in the Civil Service* (London, 1922), and F. G. Birkett, "Whitleyism in the Central Government Service," *Pub. Admin.*, Apr., 1936

[2] Documents embodying the results of the most recent inquiries are *Fourth Report of the Royal Commission on Civil Service*, Cmd. 7338 (1914), *Report of the Committee Appointed by the Lords Commissioners of His Majesty's Treasury*, Cmd.

Evidence sometimes appears that the evils of patronage have not been quite so completely eradicated as is commonly supposed. The nature and content of the examinations give rise to many protests —some on the ground that there is too much dependence on written tests; some on the charge that by over-stressing the classics and underrating the social and natural sciences, too much advantage is given the graduates of Oxford and Cambridge as against those of Manchester, Leeds, Birmingham, or Liverpool; some on the score that, in spite of persistent effort, the Civil Service Commission has not wholly succeeded in correlating its examinations with corresponding stages in the educational system of the country. There are even those who argue that the disadvantages of the examination system more than counterbalance anything that can be said in its favor. The bearing of the "higher-ups" toward the "underlings" still evinces something of the caste spirit once so prevalent, the service is overrun with ex-soldiers who have received appointment on a preferential basis; women are commonly not given the same pay as men for doing the same work. There is the inevitable protest against "red-tape"; there is apprehension, too, lest the civil servants, as they become better organized and more group-conscious, will be increasingly tempted to make use of their power, as unionized employees and as voters, to force unjustifiable legislation concerning pay, hours, pensions, and other matters of interest to them as a class.

ITS STRONG POINTS

Over against these real or fancied deficiencies are to be set many praiseworthy features. Several have been pointed out in preceding paragraphs and do not require being mentioned again. Three of somewhat more general character may, however, be referred to in closing. The first is the almost uniformly high quality of the men and women attracted to the service. Some are impelled by a sense of civic duty; some are drawn by the prospect of a career in a field in which the way is open for talent and industry, irrespective of family connections, some, no doubt, are appealed to by a profession which promises a steady and assured income, without much risk, instead of the worry and competition, the glittering prizes or doleful failures, common to the outside world. At all events, it is the universal testimony that the service attracts and holds a splendid body of workers. A second feature, closely related, is the generally excellent *esprit de corps* which the

8657 (1917), *Final Report of the Treasury Committee on Reconstruction of the Civil Service*, Cmd 164 (1919), and *Report of the Royal Commission on the Civil Service, 1929–1931*, Cmd. 3909 (1931).

service displays, and, in particular, the interest in and sense of responsibility for its own improvement which it shows. The Institute of Public Administration,[1] and likewise a Society of Civil Servants, open to all grades of the service, and aimed at maintaining the high ideals and traditions of which civil servants are justly proud, is but one of the many indications of this spirit.

NOT A BUREAUCRACY IN THE CONTINENTAL SENSE

Finally may be mentioned the fact that the service does not constitute, and is not thought of by Englishmen as being—at least in any objectionable meaning of the word—a bureaucracy. To be sure, if the term be employed in its literal sense to suggest simply "government by professional administrators," there is full justification for applying it to the British system. Undeniably, permanent, professional administrators play a rôle whose importance it would be difficult to exaggerate. They do not, however, dominate the scene and fix the whole tone and character of government in the fashion witnessed in many other countries. In pre-war Germany, the civil servants, while exceptionally efficient, formed, to all intents and purposes, a caste, separated from the rest of the people, acting according to procedures which they themselves created, and obnoxious to liberal elements generally by reason of their arbitrariness, haughtiness, and exclusiveness. Even in republican France, the numerous, highly integrated, and ceremonious administrative servants of the state form somewhat of a class apart and often offend democratic susceptibilities. In this Continental sense of the term, Britain has no bureaucracy. The rank and file of the British civil service is marked off in no sharp manner from other people. To be sure, the upper grades are drawn—as they must be, if the service is to have quality—from classes of society which have access to facilities for higher education. But this no longer means, as it once did, merely a limited well-to-do and aristocratic element. The great middle class is represented heavily; the doors are opening to able and ambitious sons of workingmen; taken as a group, civil servants in these days not only have the same social and political backgrounds as the people generally, but in their bearing and manner give no impression of assuming to be a superior order of beings. Perhaps—although the point is debatable—somewhat greater formal and technical efficiency can be attained under a different and less democratic régime.

[1] This organization, established in 1923 by a group of civil servants, holds conferences, provides lectures, encourages research, and publishes a quarterly, *Public Administration* (formerly the *Journal of Public Administration*), which is the best medium through which to keep abreast of current developments and discussion.

But, as the Englishman sees it, any possible loss at this point is more than offset by the fact that civil servants, of whatever station, are simply "ingredients in a political system in which the calm assurance was long ago planted that the citizen is master of the Executive." [1]

[1] H. Finer, *The British Civil Service*, 10. But compare the points of view suggested and questions raised in R. Muir, *How Britain Is Governed*, Chap ii For a lengthy discussion of the subject, see R. Muir, *Peers and Bureaucrats* (London, 1910), 1–94.

There is no adequate history of the British civil service, but much historical material will be found in D B Eaton, *Civil Service in Great Britain* (New York, 1880), and R Moses, *The Civil Service of Great Britain* (New York, 1914) The best brief descriptions of the present-day system are H M Stout, *Public Service in Great Britain* (Chapel Hill, 1938), and H Finer, *The British Civil Service* (London, 1937), to which may be added the latter author's *The Theory and Practice of Modern Government*, II, Chaps. xxvii–xxviii, *passim*, and W. A. Robson (ed), *The British Civil Servant* (London, 1936). M B Lambie, *British Civil Service Personnel Administration* (Washington, 1929), reprinted from 70th Cong., 2nd Sess, House Doc. 602 (pp 403–469), is a valuable and fairly recent discussion of all personnel aspects, and in the same connection should be mentioned H Walker, *Training Public Employees in Great Britain* (New York, 1935). The reports of royal commissions cited above are, of course, indispensable, and a considerable amount of documentary material will be found in L. D White, *Civil Service in the Modern State* (Chicago, 1930) An excellent brief discussion is H. J. Laski, *Parliamentary Government in England*, Chap. vi.

CHAPTER VIII

The House of Commons—Constituencies and Voters

ON THE left bank of the Thames, midway between Chelsea Bridge and the Tower, stands the largest and most impressive Gothic structure in the world, the Palace of Westminster; and within its massive walls sits, appropriately enough, the oldest, the largest, the most powerful, and in many respects the most interesting of modern legislatures. Not only is the British Parliament [1] the principal instrumentality of popular government in one of the world's great democracies; it is, in a very genuine sense, the "mother of parliaments," whose progeny has spread into every civilized portion of the globe. Much has been written in these last 20 years or more about the decline in prestige, and in actual as opposed to mere legal power, which this parliament (in common with legislatures elsewhere) is alleged to have undergone; [2] and critics propose all manner of changes in it, ranging from mere amendment of rules of procedure to drastic remodelling of structure and powers—changes aimed at better adaptation to the new conditions of a twentieth-century world. Confronted with ever-mounting burdens and tasks, Parliament is probably less efficient today than in the simpler times of Gladstone and Disraeli. Unquestionably there has been loss of spontaneity and independence in the exercise of legislative power. Everybody concedes, too, that, in its present form, one branch—the House of Lords—is an anachronism. All allowances duly made, however, Parliament is still Parliament—vigorous, vital, powerful.

THE "MOTHER OF PARLIAMENTS".

How Parliament originated and acquired its present form has been explained in an earlier chapter.[3] We are now to concern ourselves with the institution as it stands today—first of all, with the structure of the two houses, including the important matter

THE HOUSE OF COMMONS TO BE STUDIED FIRST

[1] Formerly, the "Parliament of the United Kingdom of Great Britain and Ireland," but nowadays, under enactment of April 12, 1927, the "Parliament of Great Britain and Northern Ireland." On the corresponding change in the style and title of the sovereign, see p. 51 above.

[2] See Chap. xiv below.

[3] Chap 1 above.

of parliamentary suffrage and elections; afterwards, with organization and procedure, especially in the House of Commons, and, finally, with the interrelations and balance of forces, whether entirely within Parliament or partly outside, that go to make the working governmental system what it is—together with some of the larger questions about parliamentary government to which Englishmen, looking out upon the next 50 or 75 years, are earnestly discussing. We begin with the House of Commons, not only because of the primacy which that body enjoys, but because the position, functions, and problems of the House of Lords can hardly be understood until the nature of the popular chamber has been brought clearly into view.

PARLIAMENTARY CONSTITUENCIES

The outstanding fact about the House of Commons on its structural side is that all of its 615 members are elected, and all but 12 chosen by voters grouped in constituencies laid out on geographical lines. Such geographical grouping is pretty much taken for granted nowadays But it is interesting to observe that in earlier times it was merely incidental to the main idea in representation, namely, that it was classes or interests—landholders, merchants, guildsmen, etc—that were entitled to have spokesmen in the House of Commons, and not simple aggregations of people who happened to live in particular areas. To be sure, the classes named were represented according to county and borough units But this was merely a matter of convenience Representation was primarily functional, or occupational, and only incidentally geographical; and so it remained until hardly more than a hundred years ago. Then, however, came—in the course of the nineteenth century—a decided change. By stages to be enumerated presently, parliamentary suffrage was extended to the general body of the people; the electorate grew both numerous and heterogeneous, the old and usually small functional groups lost their identity by being engulfed in the general mass; and of necessity the unit of representation became simply a numerical aggregate—the enfranchised people, of all sorts, dwelling in a definite region marked off on a map. From a functional (or at all events a functional-geographical) basis, the entire scheme of representation shifted to a basis best described as numerical-geographical. The House of Lords continued to be—as it still is—a body made up on essentially functional lines. But the popular, elective branch emerged as a chamber in which the functional principle finds legal recognition only in the election of a dozen "university members" by persons holding degrees

from specified institutions of higher learning. More than 600 commoners sit for fixed geographical areas, just as do American congressmen.[1]

These constituencies, or districts,[2] are in all cases counties, boroughs, or subdivisions thereof. Long before Parliament arose, counties and boroughs were the accepted units for judicial, fiscal, and administrative purposes, and it was natural that they should become the areas for parliamentary representation as well. Until late in the nineteenth century, they were employed for the purpose practically without subdivision, each county and borough, as a whole, returning a stipulated quota of members—which in the great majority of cases (in England proper, at all events), and regardless of size or population, was two. Attempts to apportion representation to population in a more exact manner have led within the past 50 or 60 years to the division of almost all counties, and of a considerable number of boroughs, into smaller electoral areas, laid out with a good deal of regard for historical boundaries, administrative units, and physical features, yet necessarily more or less arbitrary and artificial, and comprising groups of people combined, as a rule, for electoral purposes only. Just as congressional districts in the United States never cut across state boundaries, so British parliamentary districts are commonly contained wholly within a single county or borough.[3] Whereas, however, our congressional districts in any given state are known merely by number, every British constituency has a distinct name, *e.g.*, the borough of Bradford, the central division of Portsmouth, or the East Grinstead division of Sussex.[4]

THE SINGLE-MEMBER PLAN

A main reason for this partitioning was the triumph of the principle of single-member districts. When the first reform act was passed, in

[1] Representation in Continental European countries underwent changes similar to those in England. Of late, however, the functional principle has reappeared, notably in Fascist Italy. See pp. 841–849 below.

[2] Speaking strictly, a "constituency" is a body of people represented, while a "district" is a territorial unit. The former term is commonly employed in Britain, the latter in America. For practical purposes, the two may be used interchangeably.

[3] Exceptions arise when, for example, a municipal borough takes in new territory or otherwise alters its boundaries, because such changes have no effect upon the boundaries of "parliamentary" boroughs.

[4] It should be noted that the counties that figure in connection with parliamentary elections are the old historic counties, not the new administrative counties created in 1888. See pp. 351–352 below. A map of parliamentary county divisions will be found in G. Philip, *Handy Administrative Atlas of England and Wales* (London, 1928), Plate 5 Plate 6 in the same book shows the location of parliamentary boroughs. There are similar volumes for Scotland and Ireland in the Philip series.

1832, Welsh counties and boroughs were returning one member each, and Scottish boroughs were arranged in groups which, with few exceptions, also returned one member apiece. But, aside from five boroughs with one member each, and the county of Yorkshire and the "City" of London[1] with four each, all counties and boroughs of England proper were entitled to two. The act mentioned increased the number of single-member constituencies in England by taking away one seat from each of 31 less populous boroughs; and although the Reform Act of 1867 moved somewhat in the opposite direction by giving 13 constituencies three members each, the Redistribution Act of 1885 definitely adopted the single-member plan, breaking all of the counties, and all of the multiple-member boroughs except 23, into areas returning one member only. Today the only remaining multiple-member districts are 12 scattered boroughs and the City of London, all with two members apiece.[2] Many present-day proposals for electoral reform look to a general restoration of multiple-member constituencies—a change that would, of course, become imperative if any plan of proportional representation were to be put into effect.[3] There is no present prospect that the long-discussed proportional plan will win general favor, or that any drastic reconstruction of the electoral system will soon take place; and meanwhile the single-member district continues in general use.

UNIVERSITY REPRESENTATION

The principal irregular feature in the present make-up of the House is the separate representation of the degree-holders of certain universities. This practice dates from 1603, when, in answer to prolonged demand, Oxford and Cambridge were given the privilege of returning two members each, on the theory that they were affected by so many parliamentary enactments that they deserved to have special means of making themselves heard. Dublin was at the same time given a representative in the Irish House of Commons, this representative being transferred to Westminster when the Act of Union went into operation (1801), and another being added in 1832. The Reform Act of 1867 gave one seat to the University of London, one to Glasgow and Aberdeen combined, and one similarly to Edinburgh and St. Andrews. Finally, in 1918, 15 seats, all told, were distributed among university constituencies—although the setting up of the

[1] See p 362 below.

[2] Four of the seven university constituencies, however, also return more than one member See p 145, note 2, below. There are, in all, 595 constituencies, of which 577 return one member apiece.

[3] See pp. 176–180 below.

Irish Free State in 1922 led to the abolition of three,[1] leaving the number at the present figure, *i.e.*, 12.[2] There is nowadays no good reason—if indeed there ever was one—why degree-holders of universities should be singled out for special and separate representation; entitled as they are to vote also for county or borough members, they, in fact, enjoy double representation. But thus far all efforts to do away with the anomaly have failed.

NUMBER AND DISTRIBUTION OF MEMBERS

The Parliament that sits at Westminster is, of course, more than merely an English parliament in the narrower sense of the term; it is the Parliament of Great Britain and Northern Ireland. It became, indeed, the Parliament of the United Kingdom through the bringing in of representatives of the Welsh counties in the reign of Henry VIII, the abandonment of a separate Scottish parliament in favor of representation of the north country at Westminster in 1707, and a similar step taken for Ireland at the end of the eighteenth century. Upon the establishment of the Irish Free State in 1922, however, all Irish representation ceased except in the case of the half-dozen northern counties which retained their close affiliation with Great Britain; and this change—reducing the Irish quota at a stroke from 105 to 13—brought down the total number of members from 707 to the present 615, of whom 492 sit for English constituencies, 36 for Welsh,[3] 74 for Scottish, and 13, as has been said, for Irish. Even so, the body is still one of the two or three most numerous popular chambers in the world. Until the dropping out of the 92 Irish members, most of whom represented rural districts, county representatives preponderated; since that time there has been an almost exact balance between county and borough members, *i.e.*, 300 of the one and 303 of the other. The ancient legal distinction between "knights of the shire" and "burgesses of the borough" was, however, abolished by the Ballot Act of 1872; and so-called "rural" and "urban" constituencies are in so many cases practically indistinguishable in populational conditions and other respects that classification on that basis has little significance. Officially, all representatives are now known simply as "members of the House of Commons." All except the university members are chosen at the same time, in the same way, and by the same suffrage. All have the same rights, privi-

[1] Dublin's two and the National University's one.

[2] The list is as follows: Oxford, 2; Cambridge, 2; London, 1; combined English provincial universities, 2; Wales 1; combined Scottish universities, 3; Queen's (Belfast), 1.

[3] Including those of Monmouthshire.

leges, and powers, except only that the Scottish members invariably have places on the particular standing committee of the House to which measures specially affecting their portion of the realm are referred.[1]

NO PERIODIC REAPPORTIONMENTS

In the United States, congressional districts are laid out by, and can be altered only by, the state legislatures.[2] In Great Britain, parliamentary districts can be created or modified only by act of Parliament. In the former country, the constitution requires a reapportionment among the states (followed by the necessary intra-state readjustments) after every decennial census, in France, a redistribution takes place at intervals of about five years, most countries, indeed—including the British dominions—have definite rules on the subject. The object, of course, is to keep electoral units (in terms of the number of voters) substantially equal, so that a vote will count for as much in one place as in another; and such equality (at least a reasonable approximation of it) seems to most people a rather essential condition of true democracy. Curiously, there has never been a law on the subject in Great Britain, nor does custom impose any definite requirements; and though decennial censuses have been taken regularly since 1801, redistributions have occurred only at lengthy and irregular intervals, as hardly more than incidents of widely separated suffrage extensions and other electoral reforms. The only reapportionments in three hundred years that aimed at anything approaching uniform constituencies were those of 1885 and 1918, mentioned below; and they were made only after conditions had become shockingly bad, and with no anticipatory provision to prevent an equally unsatisfactory situation from arising again with the lapse of time. Infrequent redistributions reduce the opportunity for what is known in America as gerrymandering. But experience shows that the English habit of fair play can usually be depended upon to hold this abuse in check, and the long periods between reapportionments result in the constituencies being much of the time decidedly unequal and, besides, tend

[1] See p. 215 below The present membership of the House classifies as follows

	County Members	Borough Members	University Members	Total
England	230	255*	7	492
Wales and Monmouthshire	24	11	1	36
Scotland	38	33	3	74
Northern Ireland	8	4	1	13
Total	300	303	12	615

* Including 2 for the City of London which is not technically a borough

[2] Cf. F. A. Ogg and P. O. Ray, *Introduction to American Government* (6th ed.), Chap. xvii.

to raise every reapportionment, of even the simplest sort, to the level of a major political issue, to be threshed out afresh with much effort and delay. Under the redistribution of 1918, districts contained approximately 70,000 people apiece.[1] But the lapse of two decades has left them once more far from uniform.

DEVELOPMENT OF THE ELECTORAL SYSTEM

Members of the House of Commons are chosen in the constituencies today by an electorate that falls not far short of including all adult men and women. Only for a little more than 20 years, however, have arrangements of this sort prevailed; and prior to the "reform acts" of the nineteenth century, the suffrage was restricted indeed. In the counties, a law of 1430 confined voting to male inhabitants owning land of a yearly rental value of 40 shillings; and as late as the opening of the last century, the number of such "40-shilling freeholders," all told, in both England and Wales, hardly exceeded a quarter of a million. In the boroughs, the theory was that all freemen were entitled to vote. But, with the connivance of monarchs who found it easier to control towns with few than with many electors, the lists of freemen had in most cases been cut down until only certain classes of property-holders or taxpayers, or members of some favored guild, remained. Developments varied widely in different localities, and about the only generalizations that one can make are that, with scant exceptions, borough voters were by the beginning of the nineteenth century few in number and in the main restricted, as in the counties, to persons standing in some legally defined relation to property. Furthermore, while in most of the counties and in many larger boroughs there were bona-fide elections (even though often attended by shocking irregularities), scores of lesser borough constituencies had by the period mentioned fallen under the control of wealthy and ambitious men who bestowed the seats as they saw fit upon members of their families or upon friends, and even put them up for sale precisely as, and no less publicly than, they might have put up a country-house or shares in a joint-stock company. Many of these "patrons" were members of the House of Lords, who sometimes controlled from six to a dozen seats in the lower chamber; some were themselves members of the House of Commons; others were people outside of Parliament; and in plenty of instances ministers and other public officials did not hesitate to take a hand in the game. Altogether, it is estimated that less than

UNDEMOCRATIC ARRANGEMENTS IN EARLIER DAYS

[1] By contrast, it may be noted that under the reapportionment of 1931, the average number of people for whom members of the American House of Representatives sat rose to 282,974. It is, of course, larger now.

half of the borough members in 1832 were elected freely by their constituents. The remainder sat for "rotten" or "pocket" boroughs of one description or another. To make matters worse, the Industrial Revolution had caused a great shift of population from the southern to the northern parts of the country, but with no corresponding reapportionment of representation—resulting in large new towns like Birmingham and Manchester having no representation at all (except through the counties in which they were situated), while dozens of insignificant southern boroughs with as few as 20 or 30 people apiece—some, indeed, with no bona-fide residents whatever—went on returning their two members as of old.

GENERALLY ARISTOCRATIC CHARACTER OF THE GOVERNMENT

From all this it is obvious that the Britain of the early nineteenth century was a decidedly aristocratic country, no less in its government than in its social structure and habits. One branch of Parliament consisted entirely of persons sitting by hereditary right, along with the higher clergy of an established church; the other contained only a handful of members who were chosen freely by a broad electorate, administrators and judges owed their positions to men who acknowledged little or no responsibility to the people, and were themselves invariably of the "governing class"; local government in the counties, and very frequently in the boroughs, was in the hands of petty oligarchies, the actual governing powers were the crown, the church, and the aristocracy.[1]

Some people—many indeed—were satisfied with things as they were. Blackstone in 1765 wrote complacently of the beneficent system of law-making by "gentlemen of the kingdom delegated by their country to Parliament"; Burke in 1790 proclaimed the system "perfectly adequate to all the purposes for which a representation of the people can be desired or devised." Already, however, John Locke, as early as 1690, had denounced the "gross absurdities" of the existing distribution of electoral power. And in 1783, the younger Pitt, speaking on the floor of the House of Commons, admitted frankly

[1] The monumental treatise on the House of Commons before 1832, covering every significant aspect of the subject, is E. Porritt, *The Unreformed House of Commons; Parliamentary Representation before 1832*, 2 vols (2nd ed, Cambridge, 1909) Another extensive and excellent work, dealing with the subject less comprehensively but presenting a vast amount of illuminating material, especially on the actual methods and results of parliamentary elections in counties and boroughs, is L B Namier, *The Structure of Politics at the Accession of George III*, 2 vols. (London, 1929), and *England in the Age of the American Revolution* (London, 1930). A good briefer account of electoral conditions before the Reform Act of 1832 is C Seymour and D F. Frary, *How the World Votes* (Springfield, Mass, 1918), I, Chap IV.

that "this house is not the representative of the people of Great Britain; it is the representative of nominal boroughs, of ruined and exterminated towns, of noble families, of wealthy individuals, of foreign potentates."

MOVEMENT FOR PARLIAMENTARY REFORM

By the time when Pitt voiced this disturbing observation, there were many to applaud his words. Reform societies were agitating for manhood suffrage and equal electoral districts; but for the French Revolution and the wars that followed, some improvement, indeed, might have been attained before the century ended. The restoration of international peace in 1815 left the Tory party entrenched in office, and for a decade and a half the government—backed up by every vested interest that stood to lose by any shift of power to the people—kept things substantially as they had been. The forces of reform, however, had a good case; and the growing need for pioneering legislation to meet the social and economic difficulties flowing from the war and from the new industrial situation—legislation such as could be hoped for only from a popularized and liberalized Parliament—ultimately compelled action. The walls of opposition began to crumble in 1830, when the Tories fell from power and the Whig ministry of Earl Grey came in. Many of the Whigs were aristocratic enough; Grey himself was an aristocrat. But the party as a whole was prepared to endorse, and the new ministry to push, a reform conceived on moderate lines; and in 1832 the Great Reform Bill was placed on the statute-book.[1]

REFORM ACT OF 1832

This measure is commonly thought of as one of the most important in British legislative history, and rightly, since it gave the country's political system a slant or bent which has led straight to the democracy of the present day.[2] This it did, not merely by increasing the number of voters at the moment, but by basing the parliamentary suffrage for the first time, in counties and boroughs alike, upon a single form of qualification, *i.e.*, the rental value of property owned or used. Involving, as this did, the fixing of qualifications in terms of arbitrarily

[1] The reform movement up to 1832 is sketched in J. Redlich and F. W. Hirst, *The Procedure of the House of Commons* (London, 1908), I, Bk. II, Chap i, and J. H Rose, *The Rise and Growth of Democracy in Great Britain* (London, 1897), Chap. i For fuller accounts, see G. S. Veitch, *The Genesis of Parliamentary Reform* (London, 1913), and J. R. M. Butler, *The Passing of the Great Reform Bill* (New York, 1914).

[2] Accuracy requires it to be pointed out that the act first passed applied only to England and Wales. Supplementary acts, however, on similar lines, were passed in the same year for Scotland and Ireland. The description here given should be understood as applying to the series, rather than to a single statute, and the same is true with respect to the later reform acts commented on in the pages that follow.

selected sums, it foreordained that every fresh agitation on the subject would thereafter have as its objective a lowering of the prevailing figures, until, the vanishing point having been reached, full democracy should finally have been arrived at. The act of 1832 was drawn on such lines that it gave the suffrage to hardly half a million people who had not possessed it before.[1] It did not confer, and was not intended to confer, political power on the masses, urban or rural. Indeed, voters in some boroughs actually found themselves disfranchised. A good beginning, however, was made; and along with the doubling of the electorate, the worst defects of the existing lay-out of constituencies were remedied by a redistribution of almost 150 seats, leaving no populous section of the country without somewhat increased representation. It was this measure, too, that first required qualified persons to be registered in order to vote.

REFORM ACT OF 1867

Those who were responsible for the act of 1832 considered that it went quite far enough, but other people felt differently, and in the next few years the discussion passed into a new stage in which a group of radical and militant reformers known as Chartists[2] carried on a spectacular campaign for their "six points," *i.e.*, universal manhood suffrage, equal electoral districts, voting by secret ballot, annual parliamentary elections, abolition of the property qualification for members of the House of Commons, and payment of salaries to members out of the public treasury. Chartism as a movement did not survive to see its program realized, but by keeping its various issues before the nation for 20 years it contributed not only to the abolition of property qualifications for members in 1858, but to the enactment of a second major reform bill, in 1867, enfranchising the bulk of the urban working class and enlarging the electorate, in all, by almost a million.[3] This measure also took away seats from over-represented

[1] In the counties, the 40-shilling freehold was allowed to stand, but the voting privilege was extended to all leaseholders and copyholders of land rated as of a rental value of as much as £10 a year, and to tenants-at-will holding an estate rated at £50 a year In the boroughs, all of the old complicated franchises, or qualifications, except that of "freemen," were abolished and a simple uniform franchise was substituted, defined as the "occupation," by a ratepayer, of a house worth £10 a year

[2] Because their program was set forth in a document known as the "People's Charter."

[3] In county constituencies, there was relatively little change, the 40-shilling franchise was maintained, although copyholders and leaseholders might now vote with half of the former qualification, and a new £12 franchise made conditions easier for the tenants-at-will In the boroughs, however, there were drastic readjustments, not only striking off the £10 requirement for householders, but admitting all "lodgers" who occupied, for as much as a year, rooms of an annual rental value, unfurnished, of £10 or over.

boroughs and bestowed them where ever-changing densities of population most demanded.

REPRESENTATION OF THE PEOPLE ACT OF 1884

The principal groups of people still outside the pale were the agricultural laborers and the miners, both belonging mainly to county constituencies, and it was inevitable that sooner or later they should be made the subject of similar legislation. The ice had been broken; the old electoral system was gone in any event; and it was an occasion for no surprise when, in 1884, Gladstone redeemed a campaign pledge by introducing a bill extending to the counties the same electoral regulations that had been given the boroughs 17 years previously. After once rejecting the measure as it came up from the Commons, the House of Lords assented to it on the understanding that it would be followed by a bill making a further redistribution of seats; and this second bill duly became law in 1885. The first measure, extending the existing borough franchises to the counties, multiplied the county electors by almost three and thereby added to the lists, in the United Kingdom as a whole, twice as many new voters as were created by the act of 1867. The Redistribution Act marked the first attempt in all English history to apportion representation, the country over, in accordance with a fixed standard, and not by the hit-and-miss method of simply taking seats from a flagrantly over-represented county or borough here and there and by log-rolling methods bestowing them on more deserving ones elsewhere; and by so doing, it brought into general use the single-member district plan which, as we have seen, is still adhered to.[1]

REDISTRIBUTION OF SEATS ACT OF 1885

ELECTORAL QUESTIONS, 1885-1918:

The electoral system as it was left by the acts of 1884 and 1885 stood practically unchanged until 1918. During all of these years, almost any Englishman, if challenged on the subject, would have argued that his government was "democratic," and certainly it was so regarded by the world generally. There were, however, some rather serious limitations, arising not only from the aristocratic character of the House of Lords, but from various deficiencies of the House of Commons; and much discussion of further reforms was heard, especially after 1900.

1. MANHOOD SUFFRAGE

In the first place, the suffrage was still defined entirely in terms of relation to property. A man voted, not as a person or citizen, but as an owner,

[1] The parliamentary reforms of the entire period 1832–85 are dealt with most conveniently in C Seymour, *Electoral Reform in England and Wales, 1832–1885* (New Haven, 1915).

occupier, or user of houses, lands, or business premises. The voter did not have to *own* his property; and the occupational requirements were comparatively easy to meet. Nevertheless there were many men who were not "occupiers," nor yet "lodgers" or anything else that came within the limits of the law. Besides, the law itself was so complicated that nobody but lawyers professed to understand it. The first demand of electoral reformers was, accordingly, for a simplification of the existing system, coupled with provision for full manhood suffrage.

2. PLURAL VOTING

Then there was the matter of plural voting. Under nearly all electoral systems elsewhere, a person, if entitled to vote at all, had only one vote, no other arrangement seemed consistent with the idea of democratic government.[1] In a country, however, in which the suffrage was tied up as closely with property as it was in Britain, there was some reason why an elector should, under certain safeguards, be permitted to vote in any and every constituency in which he could qualify. This, indeed, had long been the British practice. A man might vote only once, at a given election, in any one division of a county or borough. But if he slept in Kensington, had an office in the City of London, and maintained a country place in Surrey, he was entitled to vote in all three places. Until 1918, a general election was spread over a period of approximately two weeks, giving the plural voter opportunity, even before the day of the motor-car, to get from one constituency to another, and thus to vote anywhere from two or three to half a dozen or more times. And since there were more than half a million plural voters in the country, one will not be surprised to learn that electoral results were often affected appreciably by the practice referred to —or that, since the benefits of the scheme accrued almost entirely to the Conservatives (as being the principal land-owners), the Liberal party early made "one man, one vote" a slogan and set out to accomplish the total suppression of the plural system.

3. WOMAN SUFFRAGE

Another suffrage question came to the fore soon after the opening of the present century, namely, the enfranchisement of women. As early as 1847, the writer of a widely circulated pamphlet argued that as long as both sexes were not "given a just representation" good government was impossible, and though John Stuart Mill failed in 1867 to get a clause into the reform act of that year making female taxpayers parliamentary electors, an amendment to the Municipal Corpora-

[1] The most notable exception was Belgium, where, until 1921, qualified persons were entitled to as many as three votes.

tions Act of 1869 gave them the ballot in municipal elections. A national society to promote the cause was founded in 1867; many private members' bills conferring the parliamentary franchise made their appearance in succeeding decades; and in 1903 a newly organized Woman's Social and Political Union launched a spectacular campaign aimed at forcing the introduction of a bill sponsored by the government, such as alone would stand any real chance of becoming law. Furthermore, from having looked only to obtaining the parliamentary ballot for women under the property qualifications then applying to men, the movement advanced, by 1909, to the point of envisaging the enfranchisement of substantially the entire adult female population.

4. OTHER QUESTIONS—REDISTRIBUTION OF SEATS

Still other questions stirred discussion. There was opposition—chiefly from the Liberals—to continuing the separate representation of the universities. The system of registering voters was cumbersome and needed overhauling. More important, the apportionment of seats had again got badly out of keeping with the distribution of population—so much so that there were constituencies which contained 12 or 15 times as many people as others. If the Liberals were bent upon ending plural voting, the Conservatives were no less determined upon redistribution—in both cases for the good and sufficient reason that existing arrangements worked to the advantage of the other party.[1] Having shorn the second chamber of its veto power (in the historic Parliament Act of 1911 [2]), the Liberal government of Mr. Asquith in 1912 brought forward an electoral reform bill providing for complete manhood suffrage, abolishing plural voting, simplifying the registration system, and putting an end to university representation. Controversy over woman suffrage amendments, however—coupled with growing seriousness of the agitation for home rule in Ireland—led to abandonment of the project; and a less ambitious measure suppressing plural voting in general elections (though not in by-elections) was kept from reaching the statute-book in 1914 by the outbreak of the World War.[3]

[1] The Conservatives' objection to the existing apportionment arose primarily from the fact that Ireland, although only about half as populous as in the earlier nineteenth century, still kept the full quota of seats allotted to her at the union of 1801, *i.e.*, a minimum of 100. The great bulk of the Irish members belonged to the Nationalist party, which was allied with the Liberals.

[2] See pp. 189–190 below.

[3] For fuller treatment of the matters dealt with in preceding paragraphs, see H. L. Morris, *Parliamentary Franchise Reform in England from 1885 to 1918* (New York, 1921).

REPRESENTATION OF THE PEOPLE ACT OF 1918

As events proved, the war only paved the way for a more comprehensive, and decidedly less partisan, reconstruction of the electoral system than anybody could have hoped for previously, and, no less unexpectedly, the reform was accomplished while the struggle was actually going on. It was, of course, not by choice that the government turned its attention to electoral questions while the nation was still fighting for its life within hearing of the Channel ports. Rather, it was compelled to do so by the sheer breakdown of the electoral system, caused by wholesale enlistments in the army and by the further dislocation of population arising from the development of war industries. The situation was bad enough in county, municipal, and district elections. But a parliamentary election under the abnormal conditions existing would have been a farce. By successive special acts, and with general consent, the life of the parliament chosen in December, 1910, was prolonged, in order to defer, and perhaps to avoid altogether, a war-time election. A general election, however, there eventually would have to be; and whether before or after the cessation of hostilities, it admittedly would demand, in all justice, a radically altered system of registration and voting, if not new franchises and other important changes. At the instigation of the cabinet, Parliament therefore took up the matter in the summer of 1916; an exceptionally representative and capable "Speaker's Conference"—so-called because made up and presided over by Speaker Lowther—was set to studying the subject; a carefully prepared report was submitted in 1917; [1] and early in 1918 a new Representation of the People Act became law.

A COMPREHENSIVE MEASURE

The provisions of this great piece of legislation that attracted most attention were those which swept away all surviving restrictions upon manhood suffrage and conferred the ballot upon some 8,500,000 women, thereby raising the total number of voters from some 8,500,000 (in 1915) to slightly more than 21,300,000. Upon the basis of this vastly augmented electorate, however, the act went on to erect an electoral system, by no means entirely new, to be sure, yet showing novel features at almost every turn, and the measure will be entirely misunderstood if thought of as only a suffrage law like the act of 1884, or even as a suffrage-reapportionment statute like the acts of 1832 and 1867. Redistribution of seats, plural voting, registration of electors, absent voting, proxy voting, campaign expenditures—all were dealt with in detail, so that, except as will be indicated below, prac-

[1] *Letter from Mr. Speaker to the Prime Minister.* Cmd. 8463 (1917).

tically the whole electoral law as it stands today is to be found within the four corners of this remarkable war-time statute.[1]

THE SUFFRAGE FOR AIEN

Effort to adapt electoral machinery to the conditions created by the war early convinced the Speaker's Conference that the old practice of defining franchises solely in terms of relationship to property ought to be given up, and that in lieu of it the principle should be adopted that the suffrage is a personal privilege, to be enjoyed by the individual simply as a citizen, and with no longer any distinction between residents of counties and of boroughs. The two houses accepted this view, even though for the time being men and women did not obtain the ballot on identical terms.[2] The qualifications required of male electors at last became relatively simple. Any man who is a British subject, 21 years of age or over, and not prevented by legal incapacity, is entitled to have his name on the voters' list in the constituency in which he resides, provided he has been a resident of that constituency for a period of three months ending in the June preceding the annual preparation of the register, or even if he has lived for part of the qualifying period in some other constituency in the same or a contiguous county or borough. Neither tax-paying nor educational qualifications—familiar enough in the United States—have any place in the system. There are, of course, disqualifications. Peers cannot vote in parliamentary elections, on the theory that as members of the upper house they are already endowed with an appropriate amount of political power.[3] Lunatics and idiots are naturally debarred, and likewise persons convicted of treason or felony as long as the sentence has not been served or pardon granted. But people receiving aid out of the public funds for poor relief, although disqualified before 1918, are no longer so.

THE PROBLEM OF WOMAN SUFFRAGE

The outbreak of the war in 1914 seemed to end all hope for early legislation on woman suffrage. The ultimate effect was, however, quite the opposite. Within two and a half years, the conflict brought the suffragists an advantage which no amount of agitation had ever won for them, *i.e.*, the active backing of the government; and an additional few months carried their cause to a victorious conclusion which

[1] It was, of course, this act that rearranged the constituencies on the basis described above (pp. 142–145), except as Irish representation was altered by the creation of the Free State in 1922 (pp. 373–375 below).

[2] Qualifications for voting in local, *i.e.*, county and borough, elections were, of course, not affected, and are still tied up with the ownership or occupancy of property. See p. 352 below.

[3] Irish peers sitting in the House of Commons are excepted. See p. 184 below.

might not have been reached in a full decade of peace. Now that men were to have the suffrage *as persons*, rather than simply as owners or occupiers of property, it was more than ever difficult to withhold it from women. Indeed, in the present juncture—in the face of women's superb services to the nation during the war—to withhold it was quite impossible. Powerful opposition, of course, was raised. All of the old anti-suffrage arguments were heard again, and in addition it was contended, with a certain amount of plausibility, that a woman's enfranchisement act ought not to be put on the statute-book without a referendum, or by a parliament which had overrun its time by two years, or while three million men, including more than one-fifth of the members of the House of Commons, were absent in military service. There was the awkward situation, too, that the war had so depleted the man-power of the nation that if women were given the suffrage on the same terms as men, there would be a heavy preponderance of female voters, even after the soldiers should have returned from overseas. And when it was proposed that the masculinity of the electorate be safeguarded by giving qualified women the ballot only at the age of 30, it was objected, on the one side, that this would be arbitrary, illogical, and unfair (especially as more than three-fourths of the women employed in the munition plants were under that age), and, on the other, that even if it were done, the disparity, as a matter of practical policy, could not long be maintained.

HOW SOLVED

There was, at the time, however, no feasible alternative, and accordingly the act as passed conferred the parliamentary suffrage on every female British subject 30 years of age, or over, who was herself, or whose husband was, entitled to be registered as a local-government elector by virtue of the occupation of a dwelling-house, without regard to value, or of land or other premises of the yearly rental value of £5. This sounds more complicated than it really is. The cardinal points are (1) that the suffrage for women of requisite age, unlike that for men, was to be determined in relation to local, *i e*, county or borough, government status, (2) that a woman who was entitled to vote in local elections by reason of either of the specified property relationships might vote, if duly registered, for a member of Parliament, and (3) that, even though she was not a local-government elector, she could still vote in a parliamentary election if her husband was a local elector on either specified basis. The disqualifications laid down for men were to hold good also for women in so far as applicable, except that peeresses in their own right [1] were not to be debarred.

[1] See p. 182 below.

LATER GRANT OF FULL SUFFRAGE EQUALITY TO WOMEN

This legislation marked a long step in the direction of equal suffrage for men and women, but nevertheless deliberately stopped short of establishing it. Unlike men, women could not qualify independently, as simple residents (indeed there was no residential qualification for women at all); and there was a differential of nine years in favor of men in the age requirement. Everybody understood that this discrimination in the matter of age was designed primarily to meet an abnormal situation created by the War, and from the first it was safe to assume that after the male population should have regained something like its customary numerical proportion the law would be changed. Hardly was the act on the statute-book, indeed, before those who had been responsible for the triumph set about bringing their work to its logical conclusion; and after a decade of persistent agitation, a measure meeting substantially all demands—the Representation of the People (Equal Franchise) Act of 1928—became law. Notwithstanding much heated opposition to the so-called "vote for flappers," the voting age for women was reduced to 21, and all other provisions of the 1918 law which subjected women to tests different from those applied to men were repealed. The effect was to add more than 5,000,000 women to the electorate, bringing up the total of female voters to something like 15,000,000, as compared with 13,000,000 men—a grand total of 28,000,000, or about 60 per cent of the entire population of the country, as compared with four per cent in 1831.

UNIVERSITY REPRESENTATION INCREASED

Far from abolishing university representation. as the government bill of 1912 proposed to do, the act of 1918 increased the number of institutions entitled to be represented, the number of university members, and the number of holders of degrees qualified to take part in the election of university representatives.[1] In general, holders of all degrees (except honorary ones) may now participate, whereas formerly the privilege was restricted to recipients of the older arts degrees. This applies to women equally with men; and in the case of Cambridge, which does not yet give degrees to women, but only "titles to degrees," a woman may be enrolled as a voter if she can show that she has fulfilled the conditions that would entitle a man to a degree.

Electoral reform under the leadership of a government of which

[1] It was practically necessary either to abolish the system or to extend it, because if it was to be continued at all, the claims of certain of the younger universities, and of certain groups of degree-holders of older and younger ones alike, could not be denied

Mr. Lloyd George was head might have been expected to bring plural voting absolutely to an end; and if the Liberals could have had their way, it would have done so. The Conservatives, however—and not merely the members of the party of that name, but other people of conservative bent—insisted upon retaining it, for the same reason that they urged adoption of a plan of proportional representation,[1] *i.e.*, to help protect the more educated and wealthy part of the electorate from being utterly overborne by the rising tide of laboring-class votes. The Liberal leaders maintained their point only to the extent of securing a restriction of the number of votes that any one elector may cast to two, as compared with the indefinite number under the old system. As matters now stand (since the supplementary legislation of 1928), an elector—man or woman—may vote in one constituency as a resident and in another as an occupier of land or other premises, of an annual rental value of £10, for purposes of business, a trade, or a profession; or an elector may have a second vote as holder of a university degree. In no case, however, may a person have more than one vote in any single constituency.

RESTRICTION OF PLURAL VOTING

So far as the composition of the electorate is concerned, not many questions of practical importance remain. There are plenty of problems relating to the electoral system generally,[2] but the make-up of the electorate has pretty well passed out of the realm of controversy. It has been suggested that the voting age for both men and women be raised to 25 (as in Denmark, the Netherlands, and Japan), or on the other hand lowered to 20 (as in Germany and Switzerland); but there is little interest in the matter. It will continue to be proposed that the separate representation of the universities be terminated, which would mean to abolish the university electorate; and something may be done at this point, even though, as we have seen, the act of 1918 moved rather in the opposite direction. Related to this is the question of plural voting. Except as it survives in Britain in the attenuated form of "dual voting," such voting has become quite obsolete throughout the world. In Britain, it still obstructs the fullest realization of equalitarian democracy, and total suppression of it is likely to continue to be an issue of some importance. On its present basis, however, it has less weighty political significance than formerly, and little has been said about it in these last ten or twelve years. Since nobody would suggest that degree-holders be restricted to voting

SUFFRAGE QUESTIONS THAT REMAIN

[1] See pp. 176–179 below

[2] Some of these are reviewed in the following chapter.

for university members, plural voting will doubtless survive as long as the universities continue to be represented separately. Even so, it would, of course, be possible to cut off at any time the privilege of two votes on the separate bases of residence and occupation; and while there seems to be no strong interest in the matter at present, one may venture a guess that this will be the next point at which statutory change in the composition of the electorate will take place.[1]

[1] The act of 1918 and the suffrage system for which it provided are described more fully in W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 105–132, and H. L. Morris, *op. cit.*, Chap. IX. Among numerous books dealing with the enfranchisement of women may be mentioned R. Strachey, *The Cause; A Short History of the Women's Movement in Great Britain* (London, 1928). For purposes of general comparison with the United States, see F. A. Ogg and P. O. Ray, *op. cit.*, (6th ed.), Chap X, and K. H. Porter, *History of Suffrage in the United States* (Chicago, 1918).

CHAPTER IX

Parliamentary Elections

MEMBERS of legislative bodies in the United States invariably have fixed terms (two, four, six years, as the case may be), and hence are elected at intervals of uniform length. In Britain, the same is true of county and borough councillors, but not of members of the House of Commons. The latter are chosen anew whenever, and as often as, a previous House is dissolved. The Parliament Act of 1911 does indeed make the maximum life of a parliament—and therefore the maximum period between elections—five years.[1] But under extraordinary conditions, even this limitation may be waived, as happened when, for war-time reasons, the parliament elected in December, 1910, prolonged its own existence until November, 1918.[2]

IRREGULAR INTERVALS BETWEEN ELECTIONS

From the time when the Reform Act of 1867 prescribed that parliaments should no longer terminate automatically upon the death of the sovereign, the only way in which a parliament has been brought to an end has been by deliberate dissolution, formally decreed by the king, but actually brought about by the cabinet. Of course, a parliament might conceivably go out of existence simply by expiration, *i e*, by reaching the limit of its five-year mandate. But in point of fact this is very rarely allowed to happen.[3] Nearly always there is a dissolution—prompted sometimes by the desire of a tottering ministry to save itself by an appeal to the country, sometimes by the acknowledged obligation resting upon a newly installed ministry to go to the people for an endorsement and mandate, and again sometimes by the decision of a ministry, when enjoying full parlia-

DISSOLUTIONS CONTROLLED BY THE CABINET

[1] The period was reduced to this figure from the previous seven years in order to strengthen popular control over a House of Commons now made more powerful by weighty limitations imposed upon the House of Lords See p 190 below

[2] See p 154 above It should be noted that such extensions can be made only by an act in which the House of Lords has concurred

[3] Only once in the last century and a half, *i e*, in the case of the parliament of 1867–73 (seven-year mandate then).

mentary support, to seize a favorable occasion for an electoral triumph conferring a new lease on official life. Three or four years may pass without an election. On the other hand, there may be two elections in a single year, as in 1910, or one in each of three successive years, as in 1922–24. Except in so far as their hands are forced by failure of support in the House of Commons, the matter lies entirely with the prime minister and his associates in the cabinet; and it goes without saying that this gives them and their party a decided tactical advantage. They can nurse the country along until conditions are right, and then announce a dissolution; indeed, they may deliberately "spring an election" so timed as to catch their opponents off their guard, although the trick is familiar and all parties try to be constantly ready. The ministers, to be sure, will not make their decision lightly; for their fellow-partisans do not relish being put to the trouble and expense of seeking reelection any more than do other people, and besides there is always a possibility of miscalculation.[1] One of the main advantages of the cabinet system is its tendency to bring about elections when, and only when, there are genuine issues to be settled.[2] Under the American fixed-term plan, parties and candidates are sometimes hard put to it to find issues when election time inexorably comes round. There are arguments for longer, as well as for shorter, intervals between elections. But in any event there is a good deal to be said for a system which permits an election to be held whenever affairs reach a juncture where the government needs to be guided by a fresh expression of the will of the electorate.

WRITS FOR A NEW PARLIAMENT

When an appeal to the country has been decided upon, a royal proclamation is issued which not only dissolves the two houses but indicates the desire of the king to "meet our people and to have their advice in Parliament," and announces that the Lord Chancellor and the governor of Northern Ireland have been instructed to issue the necessary writs. Writs of *summons* are sent to the members of the House of Lords (except the Scottish representative peers) individually; writs of *election* are dispatched to sheriffs of counties, mayors of boroughs, and chairmen of urban district councils, requiring them, as "returning officers," to make proper arrangements for the selection of

[1] A notable instance of such misjudgment was the dissolution of 1923, decided upon rather doubtfully by a Conservative cabinet that apparently had a long lease on life, in deference to Prime Minister Baldwin's desire to go to the country with a program of tariff reform.

[2] France is the one cabinet-government country in which this advantage is not realized. On the special situation existing there, see p. 450 below.

members of the lower house.[1] Thus is set in motion the electoral machinery, which does not stop until the new House of Commons has been chosen and convoked.

NOMINATION OF CANDIDATES

British elections proceed with alacrity, and on the eighth day after the proclamation (Sundays and holidays excluded) all nominations must be made. On its face, the nominating process is exceedingly simple. There is neither convention nor primary, and all that is required by law is that a person who aspires to be a candidate shall, on the prescribed day, file with the returning officer a paper setting forth his name, residence, and business or profession, together with the names and addresses of two registered voters of the constituency who propose and second him and of eight others who "assent"—this, and one other thing, namely, a deposit of £150, to be forfeited unless the candidate proves to be unopposed or receives more than one-eighth of the total vote cast in his constituency on polling day. That this latter safeguard against frivolous or useless candidacies is effective is indicated by the fact that as a rule not more than 30 or 40 candidates in the entire country are compelled to pay the forfeit.[2]

HOW CANDIDATES ARE ACTUALLY SELECTED

Of course, there is more to the matter of nominations than the hit-and-miss procedure suggested by the preceding paragraph. Leaders and committees of local party organizations look over the available material, balance off one aspirant's qualifications against those of another, confer and arrive at decisions. Central party offices at London propose non-resident candidates if none of satisfactory character can be found locally, or even virtually impose a candidate upon the party organization in a constituency if he be one who must somehow be taken care of. And so, in one way or another, candidates are sufficiently agreed upon, and even announced, in advance to obviate uncertainty and delay should a dissolution take place suddenly and unexpectedly. Contrary to what might be expected by a person familiar only with the formal rules on the subject, in the great majority of single-member constituencies only two or three candidates enter the lists—quite frequently three, of course, since the

[1] For the form of the writs, see W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 55–56

[2] In 1929, however, the number rose to 111, and in 1931 it was 84. A similar plan is followed in Eire (Ireland), Canada, and Japan For the protection of its candidates (frequently persons who can ill afford to forfeit £150), the Labor party maintains a general election deposit insurance fund into which each candidate pays a premium of £10, and out of which all candidates forfeiting their deposits are reimbursed Even so, the party does not normally put up candidates except where they can be reasonably sure of polling the required one-eighth of the total vote

rise of Labor to the rank of a major party. So completely is the matter under control of the party organizations that there is practically no room for candidacies except those which these organizations endorse.

QUALIFICATIONS

Who is eligible to be nominated? In other words, what qualifications must a person have in order to be elected and seated at Westminster? Many different regulations have been in effect at various times. Measures passed in the fifteenth century required residence in the county or borough represented. These soon fell into abeyance; but religious tests imposed rigid restrictions, and in the eighteenth century property requirements were added. The last obsolete residential requirement was repealed in 1774, and many members now sit for constituencies in which they do not live;[1] property qualifications, which proved easy to evade through fictitious conveyances of land, were swept away in 1858; and the last survival of religious tests is to be seen in the present rule disqualifying clergymen of the Church of England,[2] ministers of the Church of Scotland, and Roman Catholic priests. Nowadays the only positive requirements are that the member shall be of age, a British subject (by birth or naturalization), and willing to take a very simple oath or affirmation of allegiance compatible with any shade of religious belief or disbelief. Negatively, certain other requirements are imposed by the debarment, not only of clergymen of the three historic churches named, but of peers (except that Irish peers may sit for any but Irish constituencies), persons holding contracts from the government, convicts, lunatics and idiots, pensioners of state (except as former civil servants or diplomats), and holders of office under the crown except such as are regarded as of a political nature. Women first became eligible under the terms of a Parliament (Qualification of Women) Act of 1918, and at the general election of that year one female candidate was successful—even though, being a Sinn Feiner, and, as such, unwilling to identify herself with a government that refused to concede Irish independence, she did not take her seat. The first woman who actually served

[1] For interesting comment on the resulting advantages, see H. J. Ford, *Representative Government*, 165–170. Under American practice, members of Congress must be residents of the state, but not necessarily of the district, from which they are elected. Except in a few instances in the largest cities, however, congressmen are—by usage as old as Congress itself—invariably residents of their districts, and it is not worth while for an outsider to seek election. See J. Bryce, *The American Commonwealth* (4th ed.), I, 191–195, and H. W. Horwill, *The Usages of the American Constitution*, Chap. IX.

[2] Since the disestablishment of the Anglican Church in Wales in 1920, Anglican clergymen in that part of the realm are eligible.

was the American-born Lady Astor, victorious in a by-election at Plymouth in 1919. The qualifications for women are now precisely the same as for men.[1]

THE HOUSE OF COMMONS AS A MIRROR OF THE NATION

What sorts of people become candidates for seats in Parliament, and win them? The answer is, "All kinds"—especially since the Labor party attained its present importance. On the green benches sit great landowners, sons of peers, bank directors, coal and iron magnates, along with soldiers, sailors, teachers, journalists, clergymen, farmers, miners, and miscellaneous manual laborers. Hardly a business, a social class, a profession, or an interest is devoid of representation. There are lawyers; but a conspicuous and significant contrast with American legislatures, both national and state, is the relatively small number of them and the less important rôle that they play. Some years ago, when there were 262 members of the legal profession in the House of Representatives at Washington there were only 90 in the much more numerous House of Commons at Westminster. There is never a Congress in which lawyers do not preponderate, there is never a House of Commons in which they constitute more than a fifth to a sixth of the membership. On this account, and because of the growing numbers of trade-union officials and other members identified with the working classes, the House of Commons is a considerably more perfect mirror of the British population as a whole, in its actual proportions, than is our House of Representatives of the American people generally.[2]

BREVITY OF CAMPAIGNS

Electoral campaigns in the United States are long-drawn-out, and often rather tedious, affairs. In Britain, they are at least never long-drawn-out. There is a sense, of course, in which they may be said to be going on most of the time. The parties are perpetually sparring for advantage. By-elections to fill vacant seats keep up the spirit of contest. Men who propose to go in for a parliamentary career address public gatherings, subscribe to civic and philanthropic causes, and in a dozen other ways keep themselves before and ingratiate themselves with the people of the constituency to which they are pinning their hopes. Members who want to continue their public careers systematically "nurse" their constituencies in similar fashion. And of course when a dissolution looms in the offing, party committees and

[1] In all, 21 different women were elected to the House of Commons from 1919 to 1924. The Duchess, the wife, and a daughter of 1929. The female quota in the House of Commons increased to 29 in the election of 1931.

[2] A full table of the professional occupations and interests of the members of the House of Commons is published also by parties in power. The Co-

candidates set actively to work without awaiting the moment when it will actually befall. The "campaign," however, in the stricter sense of the word, is limited to less than three weeks. Nominations are made eight days after dissolution, and the people go to the polls nine days after that, Sundays and other holidays excluded. In these 18 or 19 days, all told, the battle of the ballots must be fought.[1]

PLATFORMS

Brevity is not the only respect in which the British campaign differs from the American. There is no political platform in quite the sense in which we have it in this country. To be sure, the national conferences, or congresses, held by all of the parties at least once a year invariably adopt resolutions setting forth party principles and policies. Furthermore, at the opening of a campaign a general statement of the issues to be pressed in that contest is likely to come from the prime minister (in behalf of the party in power), and similarly from the opposition leader or leaders. Every candidate is, however, entitled to issue his own address or manifesto to the people of his constituency, and on this pronouncement—which may differ appreciably from any general statement issued by his party and from the addresses of other candidates bearing the same party label—he makes his fight. Authorized by law to send one communication post-free to every voter in his constituency, the candidate can circulate his manifesto without other expense than for printing; and in this way, as a rule, his campaign is formally launched. Too much stress should not, however, be placed upon the platform as a point of contrast between British and American elections. Every British party has, at any given election, an accepted program which is, in effect, a platform. Conversely, convention-made platforms in America often prove of less actual importance than the pronouncements of individual candidates, as was conspicuously true in the presidential election of 1928.

APPEALS TO THE VOTERS

The country is more wrought up at some elections than at others, and contests are keener in some constituencies than in others.[2] But even in the most one-sided fight in the most apathetic election, the appeal to the voters is apt to be of the whirlwind variety. In the course of it, every reputable means known to politicians the world over is employed—and, of course, sometimes expedients not quite so irreproachable. Meetings are held in halls and parks, and on street corners; advertisements are placed in newspapers; literature, although less than in America, is sent to the voters through the mails; billboards

[1] Electoral campaigns are relatively brief in all countries having a parliamentary form of government. In France, they seldom exceed three or four weeks.

[2] As will be pointed out, there are always some constituencies in which, for lack of competition, there is no contest at all.

are plastered with cartoons, slogans, and appeals; "sandwich-men" are employed by the day to trudge along crowded streets bearing placards soliciting votes; house to house canvassing is carried on by volunteer friends and supporters of the candidate (hired canvassers are forbidden by law) with a thoroughness hardly encountered in any other country. Radio broadcasting came into use as a campaign device more slowly than in the United States. But it was employed extensively in the elections of 1931 and 1935, and in future more voters are likely to be swayed via the microphone than by printed literature or public meetings.[1]

In it all, the candidate is naturally the leading figure, although much of the planning and actual work are done, of course, by the local party committee, the candidate's official agent, and other persons who are actuated by friendship for the candidate, interest in the "cause," or merely love of the game. There is only a relatively small area to be covered—even though the number of voters to be reached is now, on the average, almost three times as large as before 1918—and the task is carried out with a regard for detail that is rivalled in the United States only by the management of a Tammany campaign in New York City. There is not much place in British political usage of today for the notion of John Stuart Mill that making a personal appeal to the voters is an undignified and improper procedure in a system under which men are supposed to be sent to Parliament to serve the public.[2]

CAMPAIGN EXPENDITURES

As has been indicated, the campaign is run to some extent with the aid of voluntary, unpaid workers. But there are many things to be settled

[1] The feature of the British campaign that would be most likely to interest, and indeed amaze, the American observer is the "heckling" of candidates and other speakers by their audiences Speakers at political meetings in America are occasionally interrupted by having questions shot at them from the floor or gallery, but incidents of the kind are so rare as to stir comment. In Britain, the quizzing proceeds so mercilessly that many campaign addresses become little more than a series of questions, replies, interjections, retorts, thrusts, and parries It is of no use for the speaker to grow impatient or lose his temper, heckling is part of the game, and he may as well make up his mind to meet it and turn it to his own advantage as best he can If he is sufficiently quick-witted, tactful, and well-informed to be able to stand up impressively under the barrage, he may easily command more sympathy and win more votes than by the most smooth-flowing and masterful formal speech that he could hope to deliver In so far as the radio supplants public meetings, it will undoubtedly take the color out of campaigns, as a recent writer has remarked, you can turn off the loud speaker, but you can't heckle it

[2] Much interesting information concerning British electoral campaigns can be gleaned from P G Cambray, *The Game of Politics* (London, 1932). The author was long an official in the Conservative Central Office. Cf. H. Finer, *The Theory and Practice of Modern Government*, I, Chap. xiii.

for—halls used for meetings, newspaper advertisements, postage, printing, billboard space, the services of "sandwich-men"—and without some rather stringent regulation, the wooing of the electors would be likely to prove a decidedly costly performance. It was such, indeed, in former times, not only because no statutory limits were placed upon expenditures that were inherently proper, but because of the very general practice of buying votes, with money or something equivalent.

CORRUPT AND ILLEGAL PRACTICES; THE GRADUATED PLAN OF EXPENDITURES

Today a different state of things obtains. A Corrupt and Illegal Practices Prevention Act of 1883, consolidating earlier legislation on the subject, and stiffened by later amendments, effectively regulates the whole matter of campaign expenditures — and, indeed, electoral manners generally.[1] This it does, (1) by defining and penalizing *corrupt* practices, *e.g.*, bribery, treating, intimidation, personation, and falsifying the count, all of which are acts involving moral turpitude; (2) by defining and more lightly penalizing *illegal* practices, *i.e.*, acts which, while not inherently immoral, are deemed contrary to good electoral practice, such as the hiring of canvassers, paying for conveyances used in getting voters to the polls, or voting or attempting to vote in more constituencies than the law allows; and, (3) by rigorously limiting the amount of money which candidates may spend, or which may be spent in their behalf. In the matter of the amount, it is recognized that it would be unfair to fix a flat maximum sum; obviously it will cost more to carry on an equally intensive campaign in a county constituency, with the people somewhat scattered, than in a borough constituency, and, in addition, constituencies of the same type differ widely, as we have seen, in population. Hence a sliding scale has been adopted in terms of numbers of voters. As the law now stands (following changes in 1918 and 1928), the maximum permissible expenditure—computed from the time when the party organization formally "adopts" the candidate—is in county constituencies *6d.* (12 cents) per elector, and in borough constituencies *5d.* (10 cents). Every candidate must have a single authorized agent charged with the disbursement of money in his behalf, and within 35 days after an election this agent must submit to the returning officer a sworn statement covering all receipts and outlays. The heavy increase of the electorate under the suffrage legislation of 1918 and 1928 permits, of course, the outlay of rather large sums; and the records of election cases brought into the courts indicate

[1] The act of 1883 is reprinted in R. K. Gooch, *Source Book*, 261–271.

that the limits are sometimes transgressed. Furthermore, the American plan of placing restrictions upon the sources from which funds may be drawn and requiring publicity for contributions has not been tried. The regulations thus far imposed have, however, purified politics appreciably by restraining the outpouring of money by candidates and their backers, and in doing so have made it possible for men of moderate means to stand for election who otherwise would be at grave disadvantage as against wealthier and more lavish competitors.[1] An additional source of relief is the payment, since 1918, of the costs of the election itself—polling-stations, printing, clerk hire, fees and travelling expenses of returning officers, etc—out of the national treasury, rather than from assessments levied upon the candidates. On the other hand, no law touches the outlays that may be made before and after the brief "electoral period", and few persons who propose to seek election, or reelection, are so happily situated as not to be obliged to spend generously, and with as much grace as they can muster, on all sorts of local charities and other causes dear to the hearts of the people from whom their votes must come.[2]

REGISTRATION OF VOTERS

When the campaign has run its course and polling day arrives, who is entitled to vote? Manifestly, only persons who come within the bounds of the suffrage laws, chiefly the acts of 1918 and 1928. There is, however, a further important requirement, dating from the Reform Act of 1832: such persons may vote only if their names are on the electoral register of the constituency. The existing law on this subject (contained in the act of 1918, as amended in 1926) is based on the principle that it is the business of the state to see that every qualified person, man or woman, is put on the register in the proper constituency (or constituencies); and while the lists are, of course, not infallibly accurate, they are made and kept up to date with remarkable care and thoroughness. Practically no burden is placed upon the electors. In every county and borough there is a registration officer—commonly the clerk of the council—whose business it is, under the general direction of the Home Office at London, to

[1] The Labor party would like to see (1) permissible per capita expenditures reduced to 5*d* in counties and 4*d* in boroughs, (2) the use of motor-cars for carrying able-bodied voters to the polls made illegal, and (3) publicity required not merely for expenditures in behalf of individual candidates, but for all party accounts, national and local. The first two of these points were embodied in an electoral bill introduced by a Labor government in 1931, but subsequently abandoned. See p. 175 below.

[2] On British party finances, see pp. 318–320 below, and especially J. K. Pollock, *Money and Politics Abroad* (New York, 1932), Chaps. II–V.

compile and revise the list of parliamentary, as well as that of local, electors;[1] and this he does by sending canvassers from house to house in July of each year with copies of the last previous list on which are to be entered all changes due to be made. The resulting list holds good for the twelve months beginning the following October 15; and no person whose name does not appear on it may vote during this period.

ELECTION DAY AND POLLING DAY

Formerly, when the sheriffs and mayors, as returning officers, received writs of election, they exercised their discretion, within limits set by law, in fixing the election day in their respective constituencies, and also the polling day if one was necessary. As a consequence, from a week to upwards of two weeks elapsed from the time when the first results were known until the last ones were declared, and it was often possible for the constituencies voting late to see in advance how the contest was coming out and to swing their votes accordingly if any motive appeared for doing so. In any event, the country was kept in electoral turmoil for many days, suffering some of the inconveniences that are entailed in the United States by an excessively prolonged preelection campaign. The act of 1918, however, changed all this. As has been explained, the eighth day after the proclamation goes forth is now election day for all constituencies, and the polling takes place nine days thereafter, the only exception being the university constituencies, whose voting is principally by mail and is spread over some five days. Election day is really *election* day literally in only those constituencies in which there is no contest. In such cases, the single candidate is formally nominated, the returning officer declares his election, and the transaction completes itself without any voting at all. The number of such uncontested elections is not as large as it used to be when Ireland still had her hundred-odd seats and most of them were filled with Nationalists against whom it was useless to make a fight. But there are always cases of the sort—sometimes many of them—in other parts of the kingdom.[2] Where there is a contest, election day, so-called, is merely the day on which the nominations are made, the election itself being adjourned to the ninth succeeding day in order that a "poll," or count of votes, may be held to decide which candidate shall have the seat.

[1] These lists are, of course, not identical The expense of preparing them is divided equally between the borough or county and the national treasury.

[2] In 1922 there were 57, in 1923, 50, in 1924, 32; in 1929, 7, in 1931, 67, in 1935, 40 It is hardly necessary to point out that, on account of these constituencies in which the electors are not brought to the polls, the popular vote of the country as actually recorded does not indicate the total popular strength of the various parties

THE SECRET BALLOT

Until less than three-quarters of a century ago, voting was by show of hands at a public meeting of the electors; and it is hardly necessary to add that polling days were often tumultuous occasions. Rivers of beer were set flowing; bribes were openly offered and accepted; organized bands of "bludgeon-men" went about intimidating and coercing electors; non-voters thrust themselves joyously into the fray; political convictions were expressed in terms of rotten apples and dead cats; heads were broken and a generally riotous time was had by all. From 1832 onwards, reformers persistently demanded the introduction of voting by secret ballot. The change did not come, however, until 1872, and even then it was made over the protest of no less enlightened a student of government than John Stuart Mill.[1] The Parliamentary and Municipal Elections Act (commonly known as the Ballot Act) passed in the year mentioned was limited to an eight-year period, and from the expiration of that time until 1918 it was kept alive solely by being included in an annual blanket act providing for the continuance of sundry expiring laws. Thereupon, however, it was converted from an annual into a permanent statute; and certainly no feature of British political methodology is now to be regarded as more firmly established.

THE PROCESS OF POLLING

What happens when Mr. X, green-grocer of Putney, or Mrs. Y, housewife of Cheltenham, steps into the polling place prepared to do his or her part to save the nation from disaster? First of all, a poll clerk asks the name and address. These obtained, the information is checked against the registration list; and if there is no irregularity, the elector is handed a ballot. It would be a novel and disconcerting experience for any elector in Britain to find in his hands a "blanket" ballot, or a sheaf of half a dozen separate ballots, of the sort with which the American voter is commonly expected to wrestle. For, in national elections invariably, and in local elections usually, he is called upon to express his choice among only two or three candidates, for but a single position. Consequently, the ballot which he receives at a parliamentary election is a very simple affair—a bit of white paper hardly larger than an ordinary postal card, numbered on the back and bearing the official stamp on back and front, but devoid of party names and emblems, and indeed containing nothing but the

[1] Mill's argument was that, the suffrage being a public trust, confided to a limited number of the community, the general public, for whose benefit it was exercised, was entitled to see how it was used, openly and in the light of day. *Representative Government*, Chap. x, "On the Mode of Voting" (ed. by A. D. Lindsay, pp. 298–312).

names, addresses, and vocations of the candidates, arranged in alphabetical order. These ballots are put up in the style of check-books, each paper having a counterfoil or stub; and as the poll-clerk detaches a paper and gives it to an elector, he writes on the stub the elector's number on the register. Taking his paper to a screened compartment, the voter makes a cross in the space to the right of the name of the candidate of his choice; and then, folding the ballot so as to conceal the marking, but leaving the stamp exposed, he drops it in the ballot box and goes his way. If a voter is unable to mark his ballot himself, the presiding officer may mark it for him, in the presence of the candidates' agents.[1]

THE ELECTORAL COUNT

Contrary to American practice, the count is made, not at the several polling places, but at some central point in the constituency (usually the town hall or county hall); and it is made by the returning officer or one of his assistants in the presence of the candidates' agents. Furthermore, before it is made all of the ballots turned in for the constituency are mixed together, so that the result is never published for polling places, or precincts, separately, but only for the constituency as a whole. When the outcome is determined, the writ which served as the returning officer's authority is endorsed with a certificate of election, and, together with all of the ballot-papers, is transmitted to the clerk of the crown in chancery, an official in the Lord Chancellor's office, by whom the writ was originally sent out. This official copies into a book the names of all the persons certified as elected and delivers it to the clerk of the House of Commons to be used in making up the roll when the new parliament assembles.

CONTESTED ELECTIONS

Certification of the successful candidate by the returning officer of the constituency is not necessarily the last stage or step in the electoral process. For if a defeated candidate—or, for that matter, any voter—believes that there has been a miscount, or that the victor or his agents have been guilty of corrupt or illegal practices, or that the victor is ineligible, he can petition to have the election invalidated. If the

[1] Under acts of 1918 and 1920, voting by mail, and also proxy voting, is permitted under certain conditions See F. A. Ogg, *English Government and Politics* (rev. ed), 302–303.

As a rule, British electors are far less remiss about going to the polls and voting than are Americans. For example, in the parliamentary election of 1924, 16,384,629 votes were polled in an electorate of 21,729,385, amounting to almost 75.5 per cent, as compared with 29,138.935 in an electorate of 56,941,584 in the presidential election in the United States in the same year, amounting to only 51.17 per cent, and this takes no account of the large number of British voters not called to the polls because of the lack of a contest in their constituencies. In fairness, it should be noted, however, that in 1932 the American percentage reached 68.6.

question is merely one of legal eligibility, the House itself settles it. But if it relates to any electoral irregularity, it goes, not to the House, but to two judges of the King's Bench division of the High Court of Justice,[1] selected for each case by the whole body of judges in that division. They take evidence in the county or borough in which the election occurred and certify a report to the House, in accordance with which the member in question keeps his seat or loses it. In the United States, the House of Representatives is judge of the qualifications of its members, in the full sense that all disputed elections are decided by investigation and vote of the House itself, and formerly the same plan prevailed in Great Britain. Partisan handling of electoral contests in that country led, however, in 1868, to adoption of the present highly preferable system. Protests are not numerous nowadays, and the actual voiding of an election is a rare event.[2]

VOLUNTARY VACATING OF SEATS

It sometimes happens that a member of the House of Commons wants to retire. His health may have failed, or he may want to engage in some private undertaking that will absorb all of his time and energy. Here, however, a curious fact presents itself, namely, that under a rule dating from 1623 a member cannot resign his seat, just as, indeed, he cannot refuse to take it even if nominated and elected against his will. He may be dropped because he has gone into bankruptcy or become a lunatic, he may be expelled for any reason deemed sufficient by the House, *e.g.*, conviction on charges of treason or felony, he may be translated, willingly or unwillingly, to the House of Lords; but he cannot resign outright. This does not mean, however, that there is no way by which he can voluntarily sever connection. There is a roundabout way, which consists in procuring appointment to some public office which under the statutes is incompatible with membership. There are, of course, many such offices. But the one usually sought for the purpose is the stewardship of His Majesty's three Chiltern Hundreds of Stoke, Desborough, and Burnham, in Buckinghamshire. Centuries ago, this officer was appointed by the crown to have the custody of certain forests frequented by brigands.

[1] In cases relating to England and Wales, the Court of Session, in cases relating to Scotland; and the High Court of Justice, in those relating to Northern Ireland

[2] Brief general accounts of the electoral system as it stood before the act of 1918 will be found in A. L. Lowell, *op. cit.*, I, Chap. x, and M. Ostrogorski, *Democracy and the Organization of Political Parties*, trans. by F. Clarke (London, 1902), I, 442–501. Electoral procedure nowadays is described in popular fashion in M. MacDonagh, *The Pageant of Parliament*, I, Chaps. I–IV, and more thoroughly in J. R. Seager, *Parliamentary Elections under the Reform Act of 1918, as Amended in Later Legislation* (London, 1921).

The brigands are long since dead, and the forests themselves have been converted into parks and pasture lands, but the stewardship remains. The member who wishes to give up his seat applies to the Chancellor of the Exchequer for this, or for some other old office with nominal duties and emoluments, receives it and thereby disqualifies himself, and afterwards retains it only until such time as the appointment is revoked to make way for another man.

OUTLOOK FOR FURTHER ELECTORAL CHANGES

It is too much to ask of an electoral system that it give universal satisfaction. People have very different ideas as to what would constitute an ideal scheme; groups or interests that fare badly under an existing plan can be counted on to favor adopting a different one; and even if a particular system were to meet with general approval at a given time, it would soon call for revision because of shifts of population and other changes of situation. As the foregoing pages testify, the British system has been improved in many particulars during the past 60 or 70 years. In very few respects, however, can it be regarded as having attained anything approaching finality, and future generations will no doubt hear quite as much discussion of "electoral reform" as have past ones. Although hardly to be regarded as major questions, plural voting and university representation will continue to stir differences of opinion. Lacking any provision for periodic redistribution of seats, the country will see its electoral areas grow more and more unequal in population, until finally, after spirited agitation such as preceded the legislation of 1885 and 1918, a hard-won act of Parliament will make a nation-wide reapportionment—perchance (although not likely) a drastic rearrangement in connection with the adoption of some scheme of proportional representation.[1] Already, the introduction of one device or another for securing that members shall be elected in their constituencies by majorities, rather than (as now so frequently happens) by mere minorities, has taken rank as a major question. The same is true of ably supported proposals looking to the representation of minorities under some plan of multi-member districts. Even the suggestion that the geographical basis of representation be displaced by an occupational, or functional, basis, although less frequently heard today than a score of years ago, may become a leading theme of debate.

[1] The problem of redistribution came up in the House of Commons several times in 1936 and 1937, the government was reported to be studying the problem, and certain people professed to believe that something would be done about it before another general election.

The problem of majority election

For the present and lasting minor readjustments out of economic interest centers chiefly in two questions, *i.e.*, majority election and minority representation—the one springing almost entirely from, and the other greatly aggravated by, the breakdown of the old two-party system. The problem of majority election presents itself constantly whenever as many as three candidates seek election in a constituency and no one of the number polls more than a plurality of the votes cast. Thirty years ago, it was rare for more than two candidates—a Conservative and a Liberal—to oppose each other in a constituency. Whichever secured the more votes not only was elected, but of course was elected by majorities; and though unrepresented minorities might be large, they were, after all, only minorities, while their prevailing opinion had no claim beyond the right to convert themselves into majorities at the next election if they could. Individually, the members of the House of Commons sat for majorities in their constituencies, and collectively the House could be regarded as, by and large, representing and speaking for the majority of the nation. But the rise of the Labor party changed all that. In increasing numbers of constituencies, three candidates rather than two were placed in the field at election time; and, as would be expected, the popular vote was often so divided among the three that while candidate A came off victor by virtue of receiving more votes than either of his opponents, his poll was decidedly smaller than those of candidates B and C combined, with the result that he went to Westminster by the choice of less than half of the people whom he was to represent. At the election of 1929, there were "three-cornered" contests (or no fewer than 470 out of a total of 601 contested seats; and in 288 of the number the victor polled less than half of the votes cast. Except under very unusual circumstances such as prevailed in the election of 1931, this is the sort of thing that may be expected to occur at every election so long as there are three parties with large popular followings; and it is not to be wondered at that strong demand has arisen—particularly from political elements that regard themselves as suffering most from the situation—for change that in one way or another would prevent the election of any member except by majority vote.[1]

[1] The publications of the Proportional Representation Society abound in striking examples of the sort of thing that happens now. To the merely two or three cases from the election of 1929 (p. 174, n.) Cambridgeshire, the Conservative candidate won with 19,000 votes as against 18,000 and 13,000 for the Labor and Liberal candidates, respectively; in Kings Lynn, North, a Conservative triumphed with 14,000 votes as against 13,000 and 12,000 for Liberal and Labor candidates; in

PROPOSED SOLUTIONS:

1. THE SECOND BALLOT

One device proposed to this end is the "second ballot," a familiar feature of French and of pre-war German electoral practice. If adopted, it would mean that in any district in which no candidate received a majority at the first balloting, the voters would be called to the polls a second time, after an interval of a week or two, to indicate their preference as between the two candidates standing highest. This, of course, would result in a majority. Objections to the plan include the additional expense entailed (as well as extra trouble for the voters), and the danger that the final outcome would be determined largely by personal and party intrigue and bargaining in the interval between the ballotings; and to obviate these drawbacks an "alternative vote" plan has been proposed under which the voters in three-cornered contests would be expected to indicate first, second, and third preferences among the candidates, so that, in case of lack of a majority of firsts for any candidate, an effective majority for some one of the three could be arrived at by dropping the candidate standing lowest and distributing his seconds, and if necessary, his thirds also. This would enable the advantages of majority election to be realized without calling the voters to the polls a second time; and it is fair to assume that if any majority-election scheme is adopted, this will be the one. The alternative vote was recommended by a royal commission reporting in 1910; it figured prominently in the discussions of 1918; and a tri-partisan electoral conference appointed by Prime Minister MacDonald in 1929, though unable to reach unanimous conclusions, weighed the relative advantages of the alternative vote and proportional representation, bringing to light the unwillingness of the Conservative members to endorse the former under any conditions, the willingness of some of the Labor members to accept it if accompanied by other reforms, and the readiness of Liberals to accept it alone if proportional representation were not found feasible.[1] An electoral reform bill providing for the alternative vote was presented to Parliament by the Labor government in 1931, but was eventually dropped.

2. THE ALTERNATIVE VOTE

The second major electoral question—that of minority representation—looks in quite a different direction. The object of majority-

nrely, in Northwich, Cheshire, 15,477 votes served to give a Conservative candidate victory, though his Labor and Liberal competitors received 15,473 and 14,163 votes, respectively.

[1] The conference was presided over by Lord Ullswater (former Speaker Lowther). For its report, see Cmd. 3636 (1930).

election reformers is to bring it about that members will never represent mere minorities in their constituencies, the object of minority-representation advocates is to provide a way by which precisely such minorities shall be assured of representation. Interest in minority representation arose simultaneously with the movement for a broader suffrage and gained in intensity as the electorate progressively expanded and minorities, as well as majorities, grew larger and more articulate. The first device hit upon by reformers was that known as the "limited vote" and consisted of a scheme under which, in constituencies returning three or more members, the electors were to vote for two candidates only, or at all events for some number less than the full quota of seats to be filled—the idea being that the majority elements in the constituency would concentrate their votes upon certain candidates of their preference, leaving the remaining choices to be made by the minority. An experiment with this plan in 13 multiple-member constituencies under terms of the Representation of the People Act of 1867 served only to show that a majority party can, by clever manipulation, so parcel out in advance the votes of its supporters as to capture all of the places, thus frustrating the sole purpose for which the system exists.

THE PROBLEM OF MINORITY REPRESENTATION—PROPOSED SOLUTIONS.

1. THE LIMITED VOTE

Another device brought forward in the same mid-century period was that of "cumulative voting," under which the elector has as many votes as there are seats to be filled and is permitted to distribute them among an equivalent number of candidates or to concentrate them upon a lesser number, or even to bestow all of them upon one, at his discretion. By cumulating votes upon a minority candidate, a small but well-organized political element may be able to push him over the line. An effort was made to get a provision of this kind into the Reform Act of 1867, but without avail; and the only use of the system that has ever been made in Great Britain was in connection with school-board elections from 1870 to 1902.

2. CUMULATIVE VOTING

Meanwhile, still another plan had been devised. In 1857, Thomas Hare published a pamphlet entitled *The Machinery of Representation* (enlarged and republished in 1859 as *A Treatise on the Election of Representatives, Parliamentary and Municipal*) proposing a system which, as later elaborated, presented the following main features: (1) multi-member districts—already in common use—should be

3. PROPORTIONAL REPRESENTATION

retained; (2) voting by ballot should be introduced; (3) the ballots should be so arranged that the voter could indicate his first, second, third, and other choices among the candidates; (4) after the votes were cast, an electoral "quota" should be determined in each district, being the smallest number of votes that could be obtained by the number of persons to be elected, and only that number;[1] (5) at the first count of votes, only first choices should be included, and any candidates receiving the quota (or more) on this basis should be declared elected; (6) if—as was almost certain to be the case—seats remained to be filled, any votes not needed by the successful candidates should be transferred to candidates indicated as second choice—or, if not needed by such candidates, to those designated as third choice, and added on at the proper places; (7) if, after this process was exhausted, vacancies still remained, the candidate at the bottom should be declared defeated and his votes transferred to the voters' next choice, etc., until all places were filled. The voter, it will be observed, was, speaking strictly, to vote for only one candidate, indicating, however, the order in which he would be willing to have his vote transferred to a different candidate if not needed by his first choice; and he was to be reasonably assured that his vote would actually count for some one. Thus arose the characteristic English type or plan of proportional representation—the plan of the "single transferable vote"—as distinguished from the "list" system preferred in Continental Europe, under which the voter casts his ballot for a party list or ticket and the seats are distributed among the parties in proportion to the number of votes that their lists have polled.[2] In his classic treatise, *Representative Government*, published in 1861, John Stuart Mill endorsed the single transferable plan as "among the very greatest improvements yet made in the theory and practice of government."[3]

FORTUNES OF THE MOVEMENT.

1. TO 1918

Ever since Hare and Mill wrote, the foregoing proposal has been before the English people as a possible mode of solving their minority-representation problem. Efforts to get the plan into the Representation of the People Act of 1884 failed; and in 1885, as we have seen, a single-member-district scheme was adopted which—although defended by Gladstone as being in the interest of minori-

[1] This quota was to be determined according to the following formula:

$$\frac{\text{Total number of votes cast}}{\text{Number of seats to be filled} + 1} + 1$$

[2] See pp. 655–657 below.

[3] In Chap. VII, "Of True and False Democracy" (Everyman's Library ed., p. 263).

provinces, in India, in Northern Ireland and the Irish Free State, in Malta, and in mandated Southwest Africa. It has since been abandoned in France, Italy, and Greece, and for the election of members of the House of Commons in Northern Ireland, in "Nazi" Germany, too—with but a single party permitted to exist—it has entirely ceased to function. In Britain, the outlook is at least doubtful. The contention of proportional representationists that at a juncture when representative government is everywhere being challenged a necessary safeguard against dictatorship lies in making the House of Commons more broadly and truly representative incontestably has force. Dictatorship on Continental lines is not, however, regarded as a very serious threat, and the traditional objections to proportionalism still weigh heavily. The nation could not go over to the plan without sweeping away the entire existing scheme of single-member constituencies and redividing the country into districts returning three or more members—a step which, even though it would involve merely a revival of the historic multiple-member type of constituency which was the usual thing up to half a century ago, would have to be supported by a vast amount of argument. There is apprehension lest so exact a representation of the varying shades of political opinion as the proportional plan contemplates would result in destruction of the traditional type of party government—already suspended, to be sure, but still cherished as an ideal and a hope—and in opening the way permanently for something like the multiple-group system of France and other Continental countries. It is argued too, even if not very convincingly, that any proportional plan would be too complicated to be understood by the people, or to be administered effectively, likewise that in the larger constituencies that would be required, such personal contact as now exists between members and their constituents would largely be lost. At bottom, however, the politicians habitually regard the whole matter from the viewpoint of personal and party advantage; and on that basis the ultimate fortunes of the cause are likely to be determined.[1]

[1] On proportional representation in general, see W W Willoughby and L Rogers, *Introduction to the Problem of Government*, Chap xv, H L McBain and L Rogers, *The New Constitutions of Europe*, Chap v, and J. H Humphreys, *Proportional Representation* (London, 1911) The plan is advocated for Britain in J. H Humphreys, *Practical Aspects of Electoral Reform; A Study of the General Election of 1922* (London, 1923), J F Williams, *Proportional Representation and British Politics* (London, 1914), revised and republished as *The Reform of Political Representation* (London, 1918), S R Daniels, *The Case for Electoral Reform* (London, 1938), and many other books and articles, including the files of *Representation* and other publications of the Proportional Representation Society It is opposed in G Horwill, *Proportional Representation, Its Dangers and Defects* (London, 1925), and H. Finer, *The Case Against Proportional Representation* (Fabian Society Tract, 1924).

CHAPTER X

The House of Lords and the Problem of a Second Chamber

UNTIL hardly more than a hundred years ago, the House of Commons was less conspicuous, and had less actual power, than the venerable body which sits at the opposite end of Westminster Palace. Nowadays, however, the situation is far otherwise. A "second" chamber has become "secondary" as well; a leading political party, *i.e.*, Labor, favors doing away with it altogether; and though English precedent was in earlier days mainly responsible for the spread of the bicameral system around the world, English experience with the House of Lords in the past half-century has encouraged one nation after another, especially in Europe at the close of the World War, to write into its constitution provisions endowing its second chamber with cautiously devised powers of restraint, but nothing more.[1] What to do with the House of Lords has, indeed, come to be one of Britain's most weighty constitutional questions.

AN HISTORIC INSTITUTION BECOMES A PROBLEM

Descended historically from the Great Council of the Norman-Angevin kings, and left in the position of a separate chamber by the rise of the House of Commons in the fourteenth century, the House of Lords nowadays includes as many as six distinct categories, or groups, of members: (1) princes of the royal blood, (2) hereditary peers, (3) representative peers of Scotland, (4) representative peers of Ireland, (5) lords of appeal (or "law lords"), and (6) lords spiritual. Even a hasty review of these various elements will go far toward revealing the grounds for existing dissatisfaction.

GROUPS OF MEMBERS:

1. PRINCES OF THE ROYAL BLOOD

The first group—consisting of such male members of the royal family (usually not more than three or four at a given time) as are of age and within specified degrees of relationship to the king—is of no practical

[1] In other cases, *e.g.*, Canada, second chambers have become "secondary" by natural development.

importance, and hence need not detain us. Rarely does a prince of the royal blood darken the doors of the chamber, and never does one take part in debate or vote.

2. HEREDITARY PEERS SITTING BY THEIR OWN RIGHT

By far the most important group numerically is the hereditary peers; indeed, more than nine-tenths of the approximately 750 members belong in this category, and it is mainly the lavishness with which peerages have been created since the end of the last century that has enlarged the body to its present surprising proportions. With slight exceptions (to be noted presently), all peers are *ipso facto* members of the House of Lords. The term "peer" means "equal"; and its earliest use in English constitutional terminology was to denote the feudal tenants-in-chief of the crown, all of whom were literally *peers* one of another. As the separation of greater barons from lesser ones progressed, the term became restricted to the greater ones, who, as we have seen, formed an important element in the developing House of Lords, and before the end of the fourteenth century it was being used to denote exclusively those members of the baronage who were accustomed to receive a personal writ of summons when a parliament was to be held. Gradually the principle was established, not only that a baron who once received a writ of summons was entitled to receive a writ on all later occasions when a new parliament was to meet, but also that the receipt of such a writ, even a single time, operated to confer an hereditary right; and, in addition, that a peerage descending by inheritance must be accepted and held until death by the proper heir.[1] More than once it has happened that a member of the House of Commons who would have preferred to continue his career in that body was compelled, upon coming into a peerage, to accept transfer to the less active and important House of Lords. Possession of a peerage is a purely personal matter. It gives the possessor himself certain privileges, mainly a title and a seat in the House of Lords. But his children, including the heir to the title as long as he is merely heir, remain commoners.[2] The peerage is, therefore, quite unlike the nobility of Continental countries in earlier times, which invested families, and not merely individuals, with special status; properly, it should not be referred to as a nobility at all. Furthermore, the division of peers into five ranks, or grades—duke,

[1] This does not mean, however, that a man who is offered a peerage not previously existing is obliged to accept it. Gladstone, for example, repeatedly refused to be made a peer.

[2] Custom permits eldest sons to bear "courtesy" titles, which sometimes cause bewilderment among the unmitiated; but they are none the less commoners

marquis, earl, viscount, and baron—while of considerable social significance, is of no political import.

HOW PEERS ARE CREATED

Technically, peers are created—that is to say, new peerages are established—by the sovereign; but in practice the matter is controlled by the cabinet (mainly by the prime minister); and the object may be to honor men of distinction in law, letters, science, art, statecraft, or business, or to win the favor and support (perchance, contributions to party funds) of a person of influence or wealth, or to change the political complexion of the house sufficiently to enable a hotly contested measure to be passed,[1] or to keep in Parliament a useful man who for one reason or another cannot continue finding a seat in the House of Commons. There is no limit upon the number that may be created, or upon the kind, except that, under existing law, the crown cannot add to the historic Scottish peerage by creating a peer of Scotland, or direct the devolution of a dignity otherwise than in accordance with rules applying to the transmission of land. Certain classes of persons, however, are ineligible—speaking strictly, ineligible to sit in the House of Lords, which (except in the case of women) comes to the same thing. These are (1) persons under 21 years of age, (2) aliens, (3) bankrupts, (4) persons serving a sentence on conviction of felony or treason, and (5) women. Some of the older peerages can be inherited and transmitted by women, and vigorous efforts have been made in the last 20 years to induce the House of Lords to give seats to "peeresses in their own right," of whom there are at present 21. This object, however, has not been attained.[2]

3. REPRESENTATIVE PEERS OF SCOTLAND

A third group of members consists of the representative peers of Scotland. The Act of Union of 1707 made no provision for recruiting the old separate peerage of Scotland, and as a result the number of Scottish peers has dwindled from 154 to 31. Peerages have, of course, become extinct through the failure of heirs; and in numerous instances a peer of Scotland has been honored with a peerage of Great Britain or (since 1800) of the United Kingdom. The incumbent, in the latter

[1] Thus in 1711 Queen Anne and her ministers created 12 new peers in a batch so as to obtain a majority for the treaty of Utrecht. More often the mere threat to create peers on a large scale has sufficed to overcome the opposition, as in 1832 when the Reform Bill was pending and in 1911 when the Parliament Bill was under debate.

[2] On the development and status of the peerage, see W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, 200–241. A complete classified list of peers will be found in the annual issues of *Whitaker's Almanack*. An important public document on the subject is *Royal Commission on Honors: Report, 1922* (Cmd. 1789), reprinted in R. K. Gooch, *Source Book*, 232–247.

case, ceases to be reckoned as a member of the Scottish peerage, and of course acquires a seat in the House of Lords in his own right. Of the surviving Scottish peers, not all have seats in Westminster, but only 16 of their number chosen at the beginning of each parliament by the entire group, meeting as an electoral body in Holyrood Palace at Edinburgh.

4. IRISH REPRESENTATIVE PEERS

A fourth group of members is the Irish representative peers. When the Act of Union of 1801 was passed, the Irish peerage was a large body, and the measure provided, first, that thereafter—until the number should have been reduced from the existing 234 to 100 [1]—the crown should create only one such peerage for every three that became extinct, and, second, that the Irish peerage should be represented in the House of Lords by 28 of the number, elected for life by the peerage itself. Many former Irish peers have received peerages of the United Kingdom, and have seats at Westminster by reason of that fact; and of course it is those who are still only Irish peers—some 76 in all—that choose the group which sits in a representative capacity. The settlement under which the Irish Free State was established in 1922, however, contains nothing on the subject, and, no elections having taken place since that date, the actual number of Irish representative peers has fallen to 15.

5. LORDS OF APPEAL IN ORDINARY

A fifth group of members is made up of the "lords of appeal in ordinary." One of the functions of the House of Lords being to serve as a final court of appeal from the higher courts in England, Scotland, and Northern Ireland, it is altogether desirable that the body shall contain at least a few able jurists who will give their full time to the work of the House, and, further, that business of a judicial nature shall, because of its technical character, be transacted by this corps of experts, together with any of the general run of members who may happen to possess similar qualifications. In 1856, the House refused to admit a distinguished judge whom Queen Victoria had created a life peer with a view to reinforcing the judicial element, alleging that the crown no longer had power to bestow peerages of other than an hereditary sort. Twenty years later, however, an Appellate Jurisdiction Act authorized the appointment of two (afterwards increased to four, later to six, and eventually to seven) lords of appeal in ordinary with the title of baron, and legislation of 1887 made the tenure of these members, previously limited to the duration of their exercise of judicial functions, perpetual for life.

[1] This lower figure was reached in 1921.

6. ECCLESIASTICAL MEMBERS

Finally, there are the ecclesiastical members—not peers, but "lords spiritual." In the fifteenth century, the lords spiritual outnumbered the lords temporal. Upon the dissolution of the monasteries, however, in the reign of Henry VIII, the abbots dropped out, and the spiritual contingent fell into a minority. Nowadays it is numerically insignificant, being restricted by statute to 26. Scotland, whose established church is Presbyterian, has no ecclesiastical members. Under the Act of Union of 1801, Ireland had four; but since the disestablishment of the Anglican Church in that island in 1869 it has had none. From the date mentioned to 1920, England and Wales shared the 26 clerical seats. Upon the disestablishment of the Anglican Church in Wales and Monmouthshire in the last-mentioned year, however, the four bishops from that section who were then sitting were withdrawn, leaving the ecclesiastical quota purely English; and such it remains today. By statute, the archbishops of Canterbury and York and three of the bishops, namely, those of London, Durham, and Winchester, are always entitled to writs of summons. This leaves 21 seats for the remaining 28 English bishops, who receive writs of summons in the order of the length of time they have been in charge of sees. When a sitting bishop dies or resigns, the one next on the list, in the order of seniority, becomes entitled to a writ, and the others advance a step nearer the goal. Once in possession of a seat, a bishop or archbishop retains it as long as he holds a see. But of course he does not transmit it to his heirs, nor (save in the case of the five mentioned above) to his successor in office.[1]

A legislative body constructed on the lines indicated could hardly fail to be dignified and impressive; and the rôle played by the House of Lords throughout hundreds of years of English history has been decidedly honorable and influential. As already indicated, however, the second chamber has in later days furnished the country with one of its major constitutional problems; and the remainder of the present chapter must be devoted to pointing out how this situation arose, how the matter has thus far been dealt with, and what issues are involved in the question as it still looms ahead.

Dissatisfaction with the House of Lords as a supreme court of appeal was largely removed by the creation of the group of law lords in the later nineteenth century. But criticism of it as a legisla-

[1] On the composition of the House of Lords in general, see A. L. Lowell, *op. cit.*, I, Chap. xvi, W. R. Anson, *Law and Custom of the Constitution* (5th ed.), I, Chap. v. The subject is treated in greater detail in L. O. Pike, *Constitutional History of the House of Lords* (London, 1894), especially Chap. xv.

tive body, starting something like a hundred years ago, and swelling to a mighty protest in the early years of the present century, has never been allayed more than momentarily. The indictment is aimed at three main situations. One is the predominantly hereditary character of the membership; with over 90 per cent of those who take the oath sitting solely by hereditary right, the chamber seems hopelessly out of keeping with the democratic basis on which British government is now supposed to be conducted.[1] A second is the palpable fact that while certain groups and interests, *e.g.*, the large landholders and big business, are represented heavily, others of undeniable importance, associated rather with the middle and lower classes, are represented but scantily or not at all. A third is the circumstance that the House as a whole is irrevocably wedded to the principles and policies of a single political party, *i e*, Conservative, notwithstanding that this party normally commands the allegiance of considerably less than half of the electorate. Other grounds of dissatisfaction exist of course—for example, the disinclination of the bulk of the members to take part in the business of the House, or even to attend sittings.[2] But the most serious complaints spring from the three aspects mentioned.

MAIN GROUNDS OF DISSATISFACTION WITH THE HOUSE OF LORDS

Why are these features any more a source of criticism, dispute, and protest today than in the times of Walpole and the Pitts? The answer is two-fold: first, that to some extent they represent conditions that had not arisen at this earlier period (for example, the monopoly of control enjoyed by a single party), and, second, that in the interval the country has experienced profound democratizing changes in political opinion and machinery without any corresponding shift of base on the part of the upper chamber.

Consider what has happened. A century or more ago, the government as a whole could only by courtesy be termed popular, certainly it was not democratic under any present-day definition of the word. The House of Commons was, of course, the most "popular" part of it. Yet, as we have seen, that body represented the general mass of the people hardly more than did the House of Lords itself. The two houses

FAILURE OF THE HOUSE OF LORDS TO KEEP PACE WITH THE REST OF THE GOVERNMENT

[1] There are today no hereditary members in any other European parliamentary chamber. The Japanese House of Peers is partly hereditary, but by no means so largely as the British

[2] The normal attendance is about 35. More than 100 members have never so much as appeared to take the oath.

alike—as was true also of the agencies of justice, administration, and local government—were largely in the hands of the landed aristocracy, and as a rule found little difficulty in working together harmoniously. The Reform Act of 1832, however, broadened the basis of the lower house by admitting important middle-class elements to representation, and the acts of 1867 and 1884 gave the parliamentary suffrage to the great majority of male inhabitants in both town and country. At the same time, the ripening of the cabinet system brought the working executive within reach of effective public control, through the medium of the democratized lower chamber. But the House of Lords underwent no such transformation. On the contrary, it remained, as it still is, an inherently conservative body, in the main representing, in a direct and effective way, the interests of property, instinctively hostile to changes which seemed to menace the established order, and identified with all of the forces that tended to perpetuate the aristocracy and the Anglican Church as pillars of the state. By simply standing still while other branches of the government underwent progressive popularization, the second chamber became, more and more, a political anachronism—an assembly of men who were lawmakers by the accident of birth, "lifting its ancient towers and battlements high and dry above the ever rising and roaring tide of democracy."

THE PARTY ASPECT

This was a change that took place outside the walls of the historic chamber. But toward the close of the century another almost equally important development occurred inside. This was the conversion of what had been a bipartisan body into a body composed, to all intents and purposes, of men of a single party. If any particular date is to be mentioned in connection with this shift, it would be 1886, the year in which the Liberal party split asunder on Gladstone's first home rule bill; for the upshot of that schism was the secession from the Liberal party of almost all of the members of rank and position, naturally including most of those who sat in the hereditary chamber. From that time forth, the Lords became, and remained, overwhelmingly Conservative, in a total membership, in 1905, of over 600, there were exactly 45 Liberals, and even in 1914, after Liberal ministries had been providing peerages for their supporters for upwards of a decade, there were only 116. Manifestly, any Liberal ministry had from the outset to reckon with an unsympathetic upper chamber, without whose assent, however, it could place upon the statute-book none of the measures in which it was interested.

THE LIBERAL POLICY OF CURBING THE POWERS OF THE LORDS

Down to some 30 years ago, people who talked about "reforming the Lords" were apt to be thinking only of improvements that might be made in the membership of the chamber. Most often it was suggested that inactive or unworthy hereditary peers be excluded, and that a sizable quota of life peers be substituted, to be drawn from men of attainment in law, diplomacy, and other professions and arts. Resolutions or bills looking to these ends—sponsored in several instances by members of the chamber itself—made their appearance as early as 1869. No action, however, resulted, and interest eventually shifted to the question of curbing the chamber's power to veto measures which the ministers and popular branch wanted translated into law. Naturally, it was the Liberals who brought this alternative proposal to the fore. Many Conservatives would have been entirely willing to see the structure of the chamber overhauled; but for obvious reasons they had no interest in seeing its powers curtailed. The Liberals, on the other hand—while also favoring a reconstruction of the membership—were concerned chiefly about the matter of powers. Gladstone's government of 1893 failed in its larger objectives because of the Lords' veto; and the Campbell-Bannerman ministry of 1905, although supported by the largest majority that any party had ever possessed in the House of Commons, promptly came up against the same disheartening obstacle.[1]

THE QUESTION OF REFORM IN 1909-11

The upshot was that when, in 1909, the Lords made bold to reject the annual Finance Bill because of increased taxation which it imposed on land and other forms of wealth, the Liberal government of Mr. Asquith—after appealing to the country and winning a sufficient victory to cause the upper house to give way and allow the new taxes to become law—staked its very existence upon an immediate and drastic reduction of second-chamber powers. Leading peers sought to placate the embittered Liberals with proposals for reconstruction of membership, but the ministers refused to be diverted from their plan; and the outcome justified their stand, although not until after the country had seen exciting times. Following a second general election in 1910, turning almost entirely on the second-chamber issue, the government's Parliament Bill finally surmounted the one serious hurdle in its pathway, *i.e.*, the hostility of the body whose powers were to be reduced, in the summer of 1911.

[1] The relations of the two branches of Parliament through a hundred years are sketched in E. Allyn, *Lords versus Commons, A Century of Conflict and Compromise, 1830–1930* (New York, 1930).

THE PARLIAMENT ACT:

The triumphant Liberals had by no means thrown overboard the idea of reconstructing the upper chamber on more democratic lines, and in its preamble the Parliament Act promised supplementary legislation to this end.[1] The measure now in hand, however, dealt rather with the matter of powers, its general object being to provide ways by which finance bills could quickly, and other bills eventually, be made law whether the House of Lords agreed to them or not. These arrangements might or might not be perpetuated after the chamber should have been reconstructed; but until then, at all events, they were to make impossible the recurrence of anything like the happenings of 1909. As to finance measures, the act reads as follows: "If a

1. MONEY BILLS

money bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is sent up to that house, the bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an act of Parliament on the royal assent being signified, notwithstanding that the House of Lords have not assented to the bill." The term "money bill" is so defined as to include measures relating not only to taxation but also to appropriations, loans, and audits; and power to decide whether a given measure is or is not a money bill, within the meaning of the act, is given to the speaker of the House of Commons, with no appeal from his decision.

2. OTHER BILLS

This was as far as the events of 1909–10 alone would have required the authors of the measure to go. But the Liberals and their allies had hardly less prominently in mind the defeat of Gladstone's home rule bill of 1893, of the plural voting bill of 1906, and of other largely or wholly non-financial measures; and accordingly the second major provision became this: that any other public bill (except a bill to confirm a provisional order or to extend the maximum duration of Parliament beyond the period fixed by law) which is passed by the House of Commons in three successive sessions, whether or not of the same parliament, and which, having been sent up to the House of Lords at least one month, in each case, before the close of the session, is rejected by that chamber in each of those sessions, shall, unless the House of Commons direct to the contrary, become an act of Parliament on the royal assent being signified thereto, notwithstanding that the House of Lords has not given its approval to the bill. It is required that at least two years shall have elapsed between the date of the second reading of such

[1] For the text of the measure, see R. K. Gooch, *Source Book*, 329–332.

a bill (*i.e.*, the first real opportunity for discussion of it) in the first of these sessions of the House of Commons and the final passage of the bill in the third of the sessions. To come within the provisions of the act, the measure, furthermore, must be, at its initial and its final appearances, the "same bill"; that is, it must contain no alterations save such as are made necessary by the lapse of time.

3. SHORTENED LIFE OF A PARLIAMENT

With its legislative power thus increased, the House of Commons must, it was agreed, be kept in even closer touch with public opinion than in the past, and to this end the act fixed the maximum life of a parliament—in other words, the maximum interval between general elections—at five years, instead of the seven prescribed by law for almost two hundred years previously.

By bringing to an end the substantial parity of legislative power which, in theory and in law if not always in practice, the House of Lords had enjoyed through the centuries, the Parliament Act accomplished one of the greatest changes ever made in the British constitution by deliberate enactment, incidentally affording at the same time a striking illustration of the tendency to enlargement of the written, at the expense of the unwritten and conventional, parts of that great plan of government. As for the upper chamber, it has, of course, never been the same since. Its judicial powers are unimpaired; and in the domain of legislation it still enjoys much influence, and even authority. No project of financial or other legislation can be put on the statute-book without being submitted to it, and there is nothing except custom and convenience to prevent even the most important of non-financial measures from making their appearance first upon its calendar. A single, bare presentation, however, of any money bill fulfills all legal requirements and ensures that such a measure (having, of course, already passed the House of Commons) will become law. The upper house is allowed one month in which to approve or reject, but, so far as the fate of the bill is concerned, the result is the same whatever it does.

In respect to non-financial bills, the second chamber still has a veto. This check, however, is only suspensive, not absolute. The terms required for placing such measures on the statute-book without the Lords' assent are admittedly not easy to meet, and it is interesting to observe that in all the 28 years from the passage of the act to the date of writing, not a single measure—financial or otherwise—has become effective without the upper chamber's consent. One should hasten to add, however, that apparently only the intervention of the World War prevented the thing from happening a num-

ber of times. The procedure contemplated in the act was invoked in the case of the Irish home rule bill of 1913, a plural voting bill of the same year, and a bill disestablishing and disendowing the Anglican Church in Wales in 1914; and while it is true that the first of these measures, though placed on the statute-book, never went into operation,[1] that the second did not become law, and that the third was, in substance, finally assented to by the Lords after the War, the history of the bills shows that the procedure laid down in the legislation of 1911 is by no means unworkable. By repeatedly rejecting a proffered measure, the Lords may, it is true, rouse public sentiment against it or otherwise so influence the attitude of the cabinet or House of Commons as to cause the project either to be given up or to be defeated at a later test; and this is the more possible since a minimum period of two years is required to elapse before a non-financial measure can be carried over the Lords' veto. All possible allowance being made, however, on these scores, it is nowadays not only legally but actually possible for legislation of every description (with the slight exceptions mentioned above) to be enacted without the Lords' assent. Truly, the second chamber has become secondary.

In actual practice, of course, this falls far short of giving the House of Commons full legislative paramountcy. As already noted, the principal focus of power in legislation today is neither branch of Parliament, but rather the cabinet. And it is not to be inferred that, as between the two houses, the popular branch invariably has its way. On the contrary, many important measures continue to be amended, and even mangled, in the upper chamber, the results being accepted by the other body with such grace as it can muster. The sheer legal power of the House of Commons to enact legislation unilaterally may serve as a sort of gun behind the door. But the give and take of law-making goes on pretty much as before—which, of course, is the reason why, from the viewpoint of people who want the will of the popular chamber invariably to prevail, the Parliament Act of 1911 is —except, perhaps, in the domain of finance—no genuine solution.[2]

The Parliament Act announced the intention of its authors to "sub-

[1] See pp. 372–373 below.

[2] The political history lying immediately back of the Parliament Act is well presented in A. L. P. Dennis, "Impressions of British Party Politics, 1909–1911," *Amer. Polit. Sci. Rev.*, Nov., 1911, and good analyses of the measure and its significance are to be found in A. L. Lowell, *Government of England* (rev. ed., New York, 1912), I, Chap. xxiiia; G. B. Adams, *Constitutional History of England* (rev. ed.), Chap. xxi; and A. L. P. Dennis, "The Parliament Act of 1911," *Amer. Polit. Sci. Rev.*, May, Aug., 1912. The text of the act is conveniently reprinted in N. L. Hill and H. W. Stoke, *op. cit.*, 99–102.

stitute for the House of Lords as it at present exists a second chamber constituted on a popular instead of an hereditary basis." If this part of the program has never been carried out, it is not because of any lack of proposals and plans.

THE "BRYCE REPORT" (1918)

Conspicuous among these is a project brought forward in 1918 by an able and broadly representative parliamentary commission—the Conference on the Reform of the Second Chamber—presided over by Lord Bryce. Starting with the premise that any reformed House of Lords ought to have some continuity with the present body, the Conference urged that the new chamber should nevertheless "have popular authority behind it," should be freely accessible "to the whole of His Majesty's subjects," should be "responsive to the thoughts and sentiments of the people," and should be so constituted that no one set of political opinions would be likely to have "a marked and permanent predominance" in it. Various methods of making up a second chamber that would meet these requirements were considered and rejected: nomination by the sovereign on advice of the ministers, election by the House of Commons, election by county and borough councils, direct election by the people. The plan finally proposed was, in brief, that the total number of members should be reduced to 327, of whom 81 should be chosen from the whole body of peers by a standing joint committee of the two houses, and the remaining 246 should be chosen, in appropriate quotas, by 13 electoral colleges, each consisting of the members of the House of Commons sitting for the constituencies contained in one of the 13 districts or areas into which the country was to be divided for the purpose. All members were to be elected for twelve-year terms (one-third of each of the two groups retiring every four years); and for election to the second group, qualifications were to be substantially the same as for members of the House of Commons.[1]

MANY OTHER PROPOSALS, BUT NO ACTION

The scheme was too much of a compromise to please either conservatives or reformers, and it never received the attention that it deserved. The coalition government of Mr Lloyd George did, indeed, proceed so far in 1922 as to submit to the House of Lords five resolutions embodying several features of the "Bryce plan" But little interest was aroused, and the proposals were pigeonholed.

[1] *Report of the Conference on the Reform of the Second Chamber*, Cmd 9038 (1918), reprinted in H L McBain and L Rogers, *New Constitutions of Europe*, 576-601. G B. Roberts, *The Functions of an English Second Chamber*, is largely a discussion of the Conference's conclusions, particularly as to the uses which a second chamber, under British conditions, ought to serve.

Assuming that sooner or later something would have to be done, and preferring that action be taken at a time when the friends of the second chamber held the whip-hand, the Baldwin government of 1924–29 promised that the problem would be dealt with during the life of the then-existing parliament. The subject, however, was full of dynamite; the nation was not at the time excited about it; and the years slipped by with nothing done—beyond perfunctory introduction of new resolutions, and equally perfunctory debate. Labor, when in office in 1924, had not dared take up the problem. Again in 1929–31 it held back; the matter was deemed as important as ever, yet not of such urgency as to warrant running the risk of wrecking the government. The "national" ministry of Mr. MacDonald dating from 1931 was, in its turn, wholly preoccupied with other things; and with Mr. Baldwin once more at the helm, after the spring of 1935, the chances of action in the near future seemed lessened rather than the reverse.

CONSERVATIVE NERVOUSNESS

Meanwhile, however, the rise of Labor to a position of parity with the older parties, and the chance that the party might presently find itself in possession of an independent majority in the House of Commons, had given the problem a new significance and a new slant. What would happen if a party which held that the House of Lords ought to be abolished outright ever obtained full power and chose to turn it against the second chamber? Manifestly, that might mean the end. Even short of that, a socialist House of Commons might—doubtless would—take advantage of the terms of the Parliament Act to place on the statute-book measure after measure, on taxation, nationalization of industries, and other matters, which the propertied and conservative classes would regard as calamitous. Small wonder, therefore, that as early as 1922 Conservatives were found insisting that bills altering the constitution and powers of the second chamber be explicitly exempted from the operation of that clause of the Parliament Act which enables general legislation to be enacted without the Lords' assent! Small wonder, too, that in later years the objective of many of them came to be nothing less than the repeal of the Parliament Act itself!

PRESENT PARTY ATTITUDES

For nearly a decade, the problem has been in abeyance. But it is always in the background of the political scene and liable to thrust itself into renewed prominence, or even preeminence. John Bright's observation that "a hereditary House of Lords is not and cannot be perpetual in a free country" is plausible, and one would hardly be accused of

rashness for predicting significant changes within a measurable future—as soon, at all events, as Labor can count a clear majority in the popular chamber, with prospect of holding it long enough to make second-chamber reform under terms of the Parliament Act a genuine threat. Save for the complicating question of powers, the membership problem would quite possibly have been settled before now. Speaking broadly, all Englishmen agree that some modifications are desirable, even though at the date of writing few people are agitated about the matter. The question is, What modifications? Again speaking broadly, Labor says: "Abolish the second chamber altogether; *any* second chamber would be a reactionary body, and what is needed is a *single* chamber, the House of Commons, kept in the closest possible touch with the people." Liberalism (what remains of it) says: "Reform the membership, but keep the chamber weak, chiefly by continuing the restrictions imposed by the Parliament Act." Conservatism says: "Reform the membership if you please, but give back the powers taken away in 1911."

THE USES OF A SECOND CHAMBER

The most fundamental question of all is, of course, whether to have any second chamber whatsoever. This would seem a curious issue for Britain, the mother of bicameral parliaments, to raise; and in point of fact it was not often raised until the Labor party came by the idea, some 30 years ago, that the House of Lords is so hopelessly out of keeping with democratic government that it ought to be suppressed root and branch.[1] Even though on record as opposed not only to the continuance of the House of Lords as we know it, but to the maintenance of any second chamber at all (even an elective one), Labor may find it unwise to persist in its idea; and so far as general opinion outside that party can be ascertained, it is undoubtedly favorable to a second chamber. The Conference of 1917–18 was unanimously of the opinion that a reconstructed House of Lords is an indispensable part of the constitutional system, and its statement (in the "Bryce report") of the four uses to be served by such a body may be taken as expressing the best opinion of Englishmen generally on the subject. They are as follows:

> "1. The examination and revision of bills brought from the House of Commons, a function which has become more needed since, on many occasions, during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.

[1] More than a hundred years ago, however, Jeremy Bentham argued powerfully against second chambers See L. Rockow, "Bentham on the Theory of Second Chambers," *Amer. Polit. Sci. Rev.*, Aug., 1928.

"2. The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.

"3. The interposition of so much delay (and no more) in the passing of a bill into a law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be especially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation, or raise issues whereon the opinion of the country may appear to be almost equally divided.

"4. Full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and divisions do not involve the fate of the executive government." [1]

All of these functions are real and important, even though one or two of them could conceivably be discharged by some agency other than a second chamber; and it is interesting to observe that two prominent Labor writers, the Webbs, while giving the House of Lords no place in the ideal constitutional system which they have outlined,[2] nevertheless seek to make some provision for the function of revision and for temporary suspension of legislation that may have been enacted too hastily. Indeed, on the ground that Britain has none of the safeguards afforded by a rigid constitution, by referendum procedure like that of Switzerland, or by judicial review like that of the United States, it is sometimes contended that she, beyond most other states, has need of a second chamber with full deliberative and revisory powers.

MUCH TO BE SAID IN THE HOUSE OF LORDS' DEFENSE

It is easy to make cynical or witty remarks at the expense of the House of Lords as it now stands. One recalls the *mot* of a former Liberal leader to the effect that the House "represents nobody but itself, and enjoys the full confidence of its constituents."

[1] *Report of the Conference on the Reform of the Second Chamber*, 4. The relative advantages of unicameral and bicameral systems are set forth succinctly in J. W. Garner, *Political Science and Government*, 600–613. The subject is discussed with special reference to Britain in H. J. Laski, *The Problem of a Second Chamber* (Fabian Tract No. 213, London, 1925), and G. B. Roberts, *The Functions of an English Second Chamber* (London, 1926), Chap. ii. In the one case, the conclusion is unfavorable, and in the other favorable, to a second chamber. Cf. R. Muir, *How Britain Is Governed* (3rd ed.), Chap. vii.

[2] Sidney and Beatrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), 110.

Fair-minded persons are prepared to admit, however, that a good deal can also be said to the chamber's credit. Its roll is undeniably crowded with the names of members who lack both ability and interest But neither the House of Commons nor any other legislative body is composed entirely, or perhaps even mainly, of men who are all that could be desired, and in the case of the House of Lords the unfit rarely darken the doors of the chamber, or, if present, take any active part. The work of the House is done very largely by men who have genuine ability, interest, and experience; and of these there are, fortunately, many. Not all of the fittest do, or can, participate regularly. Some, after elevation to or inheritance of a peerage, very naturally and properly go on with their professional, scholarly, or business careers. After all, it must be remembered that for most of them membership is an involuntary matter, which cannot always be accepted as transcending other obligations already incurred But it is doubtful whether, by and large, the actual working House of Lords is surpassed in its resources of intelligence, integrity, and public spirit by the House of Commons. Industry, finance, agriculture, science, literature, religion—all are represented there. Spiritual and intellectual, as well as material, forces find expression. The country is served from the red leather benches by men who have built up its prosperity, administered its great dependencies, risen to its highest positions in law, diplomacy, war, statecraft, and learning. The fact is not to be overlooked, too, that many of the more active members have in their earlier days had the advantage of long service in the House of Commons—that, indeed, the popular branch is to a very considerable degree a nursery of the House of Lords.[1] No student of English history needs to be told that upon sundry occasions the upper house has interpreted the will of the nation, or the realities of a political situation, more correctly than the lower, and that more than once it has saved the country from hasty and ill-considered legislation. It is not altogether the sort of a second chamber that Englishmen would plan if they were confronted today with the necessity of creating one *de novo*. But since it exists, and is so deeply woven into the texture of the national life, the most sensible course would seem to be, not to discard it outright, but rather to reconstruct it on some such lines as those laid down in the Bryce

[1] As a rule, about one-fourth of the members of the House of Lords have at one time or another had seats in the other house. A member of the House of Commons recorded in 1857 the fact, "not unimportant to constitutional history," as he truly said, that, going over to the Lords from the Commons one evening, he observed that every one of the 30 peers then present had sat with him in the popular chamber.

report. Certainly that would be most in keeping with the traditional method of English political development.

HOW THE HOUSE MIGHT BE RECONSTRUCTED

So far as membership goes, the most reasonable program of reform would appear to be (1) adoption of the principle, first suggested by Lord Rosebery, that the possession of a peerage shall not of itself entitle the possessor to sit,[1] (2) admission to membership of a considerable number of persons representative of, and selected by, the whole number of hereditary peers, and (3) the introduction of a substantial quota of life or fixed-term members, appointed or selected for their legal attainments, political experience, and other qualities of fitness and eminence.

A body so constituted would still incline to conservatism; probably it would contain a Conservative majority, in the party sense, a good deal of the time. But a Liberal, Labor, or other non-Conservative government would hardly again find itself in the embarrassing position of Liberalism 30 years ago or of Labor in more recent periods. The chief difficulty would be to hit upon a satisfactory way of selecting the life or fixed-term members. In a country organized on a federal basis, as, for example, the United States, it is easy to make up a second chamber that will not simply duplicate the first; the people in small local groups can be represented directly in the lower house and the larger federated units or areas, as such, in the upper. Britain is not a federal state; at all events, so far as England is concerned, no obvious areas for upper-chamber representation exist. Still, as was the opinion of the Bryce commission, such areas quite conceivably might be created; indeed, that body considered that combinations of the existing historic counties could very well be made to serve. Decided advantages would arise, also, from arrangements under which a substantial quota of members should be chosen to represent important special groups or interests, including the great professions. Landowners, churches, universities, scientific bodies, chambers of commerce, legal and medical associations, and trade unions come readily to mind in this connection.[2]

[1] This principle already operates in respect to the Scottish and Irish peers. It ought not to be impossible to extend it to the entire peerage

[2] In 1932, a Conservative joint committee of peers and members of the House of Commons, presided over by the Marquis of Salisbury, prepared and reported a plan under which a reformed second chamber should consist of (1) princes of the royal blood, (2) two archbishops and three bishops, (3) 150 hereditary peers chosen by the entire peerage, and (4) 150 other persons chosen throughout the country by the county councils See W. A. Rudlin, "Report on House of Lords Reform in Great Britain," *Amer. Polit Sci Rev*, Apr, 1933.

WOULD SUCH A SECOND CHAMBER MAKE TROUBLE?

A second chamber made up on these lines would undoubtedly be respectable, capable, and vigorous; and this raises a further question, of which students of the subject have been aware. Would not such an upper chamber justly claim equality of rights and powers with the popular house? Could it be kept on the subordinate plane to which the legislation of 1911 has lowered the House of Lords, or would it be necessary to repeal the Parliament Act and go back to the old plan of two strong and coordinate branches, such as prevails in France and the United States? Some years ago, the late Lord Balfour, in a public address, warned the lower chamber that a revamped House of Lords could not fail to mean an impairment of the ascendancy which the House of Commons has gained. The Bryce commission evidently feared something of the sort, and other voices have been raised, in all of the great parties, to the same effect. It is mainly apprehension on this score that has led Labor to urge, not that the chamber be merely reconstructed, but that it be abolished, thereby disposing at a stroke of all the problems that bicameralism, in the present form or any other, is capable of producing.

SAFEGUARDS

Two things are, however, to be said. In the first place, other countries, *e.g.*, the former Czechoslovakia, have found it possible to reconcile able and useful second chambers with a heavy preponderance of power in the first and more distinctly popular chamber. This they have done by carefully drawn constitutional provisions, such as ought not to be beyond the ingenuity of British statecraft. In the second place, experience shows that in the long run an upper chamber, no matter how made up or endowed with constitutional authority, cannot maintain full parity of power and influence with the lower chamber under a cabinet system of government. The constitution of France purports to make the cabinet responsible to both the Senate and the Chamber of Deputies, and the Senate is an exceptionally capable and energetic body. Nevertheless, the Chamber of Deputies enjoys a substantial preeminence in the actual control of national affairs[1] The framers of the Australian constitution deliberately provided for a popularly elected upper house, with a view to making it an effective counterpoise to the federal House of Representatives. But the idea failed. Today, a Commonwealth government recognizes the lower chamber as actually paramount, and the Senate can fairly be characterized as hardly more than a debating society. In Canada, likewise, the Senate —composed of life members appointed by the governor-general on

[1] See pp 467–468, 530–531 below.

CHAPTER XI

Parliamentary Machinery and Pageantry

THERE was a time when the organization of the English Parliament could be described in few and simple words, indeed, if one goes back far enough in parliamentary history, one finds hardly any organization at all. As centuries passed, however, and powers and functions multiplied, new and increasingly elaborate devices for guiding, regularizing, and expediting deliberation were brought into play, until nowadays equipment in the form of officers, clerks, committees, rules, calendars, records—to say nothing of unwritten habits and usages—makes up one of the most complicated and imposing mechanisms of its kind on the globe. Parliament is, indeed, a vast, vibrant machine which enacts statutes, levies taxes, appropriates money, questions ministers, and passes judgment on policy, under rules of procedure almost as exact, and sometimes nearly as rigid, as the laws governing the succession of the seasons At the same time, it is not merely a mechanism, but also a pageant, and in the brief account of its organization and procedure to be given in the present chapter and the two that follow, some of its more human aspects will purposely be brought into the picture.

PARLIAMENT AS A MECHANISM AND A PAGEANT

From the beginning of parliamentary history, the place of meeting has commonly been Westminster, once a separate city on the left bank of the Thames, but now incorporated in Greater London. The Palace of Westminster was long the most important of the royal residences, and it was natural that its great halls and chambers, together with the adjacent abbey, should be utilized for parliamentary sittings Most of the old building was destroyed by fire in 1834, and the huge, yet pleasing, Tudor Gothic structure which nowadays is pointed out to the sight-seer, usually as "the Houses of Parliament," was erected in 1837–52.

PHYSICAL SURROUNDINGS

From opposite sides of a central hall, corridors lead to the rooms in which the sittings of the houses are held—rooms so placed that, when their doors are open, the king's throne at the south end of the one is

1. HOUSE OF COMMONS

visible from the speaker's chair at the north end of the other. The rectangular hall occupied by the Commons is considerably smaller than one would expect, being, in fact, only about one-fourth as large as that occupied by the American House of Representatives. It is, indeed, capable of seating hardly more than half of the 615 members at any one time. Since it rarely or never happens, however, that all want to be in the chamber simultaneously, no great inconvenience results; and there is a decided gain in the matter of acoustics. The room is bisected by a broad aisle leading from the main entrance, at the farther end being "the table," used by the clerks and also as the resting place of the mace and of piles of books and papers, and beyond this the high-canopied chair of the speaker. Facing the aisle on each side, five rows of high-backed benches, covered with dark green leather and running the length of the room, slope upward tier upon tier to the walls; and through them cuts, transversely from wall to wall, a narrow cross-passage known as the "gangway." A sliding brass rail which can be drawn across the main aisle near the entrance forms the "bar" of the House, at which offenders against the dignity and privileges of the chamber are sometimes required, and more favored persons sometimes invited, to appear. A deep gallery runs entirely around the room. The portion facing the speaker is set apart for visiting spectators. At the opposite end, the front rows are assigned to the press, those farther back being reserved for female onlookers. The side galleries, with space for about 100 persons, are held for the occupancy of members, but are rarely tenanted.

The front bench at the upper end of the aisle, at the right of the speaker, is known as the Treasury, or Ministerial, Bench, and, by custom, is occupied by those members of the House who belong to the ministry or, at all events, such of the more important ones as it can accommodate. The corresponding bench at the speaker's left is similarly reserved for the leaders of the opposition, and hence is known as the Front Opposition Bench; persons who occupy it do so because of having been invited by the official opposition leader to share it with him. The great bulk of members, having no claim to front-bench positions, range themselves, so far as their numbers permit, in squads behind their leaders, with a tendency for the less experienced ones, and also any of loose party connections, to content themselves with places "below the gangway." There is no definite assignment of seats to the general run of members, the only rule being that a member, having found a place that he likes, may reserve it for his own use—only for a single sitting, however—by depositing his hat in it, or under more recent informal agreement, his card.

Except on unusual occasions, the visitor will not find more than one or two hundred persons on the benches. the more by reason of the fact that. there being no desks. any member who wants to write. or even to read or otherwise occupy himself, seeks the library or other rooms adjoining, whence he can readily come if summoned to a "division."

2. HOUSE OF LORDS

Although relatively more commodious, because fewer members attend the sittings. the hall occupied by the Lords is even smaller than that used by the Commons. It is also more ornate. The speaker's chair is replaced by a crimson ottoman or lounge—the "woolsack" [1] on which (although it is technically outside of the chamber) the Lord Chancellor sits when presiding, and a gorgeous throne is provided for the sovereign's occupancy when he meets his faithful lords and commons at the opening of a parliament. Otherwise, the arrangements are much as in the House of Commons, with rows of red-upholstered benches facing each other on the two longer sides, no desks, a table in front of the woolsack, a bar, and galleries all the way around for the use of peeresses, the press, and miscellaneous visitors. Members who belong to the ministry occupy the front bench at the Lord Chancellor's right hand, and leaders of the opposition the front bench at his left, while the remaining members sit wherever they like, although usually on the same side of the room as the leaders of their party. Some attention is paid to seating according to rank when the sovereign is present, but at other times the only group, aside from government and opposition leaders, that sits in a body in a fixed place is the ecclesiastical members, whose presence on the "episcopal bench" (really four benches to the right of the woolsack) is apparent enough to the visitor by reason of their flowing black gowns and ample white lawn sleeves.[2]

So much for physical surroundings—which not only are picturesque but have large practical importance in helping make parliamentary methods and manners what they are.[3] How, in the next

[1] In the days of Elizabeth, the presiding official sat upon a sack actually filled with wool, hence the present name

[2] The Parliament building and the rooms occupied by the two houses are described more fully in M. MacDonagh, *The Pageant of Parliament*, I, Chaps vii. xx, II, Chap. v.

[3] "The accident," wrote an English master of parliamentary affairs about a generation ago, "that the House of Commons sits in a narrow room with benches facing each other, and not, like most Continental legislatures, in a semi-circular space. with seats arranged like those of a theater, makes for the two-party system and against groups shading into each other." C Ilbert, *Parliament*, 124

place, does Parliament meet and prepare itself for a session? How, also, does it disperse when a session comes to a close?

PROMPT CONVENING OF PARLIAMENT AFTER A GENERAL ELECTION

The matter of frequency of sessions has already been touched upon, and we have noted that, in point of fact, the two houses are in session considerably more than half of the time.[1] One aspect, however, which calls for special emphasis at this point is the promptness with which Parliament meets and begins work after a general election. There is no rule requiring the lapse of any definite period of time between the election of a new House of Commons and the assembling of Parliament, but it is the practice to make the interval as brief as possible, and it rarely exceeds two or two and one-half weeks. There is a very good reason for this. Under the British system, the ministers must at all times have the confidence and support of a majority in the House of Commons. In order to determine whether they have this support, it is necessary to call the House into session; any ministry continuing in office for a considerable period after election without causing Parliament to be summoned would be charged with trying to rule independently of popular mandate. The result is that a new House of Commons goes to work almost immediately after election, and certainly reflects—in so far as it is possible for any body so chosen to reflect—the sentiments and desires of the people at the moment.[2]

ADJOURNMENT, PROROGATION, AND DISSOLUTION

Each house may adjourn at any time it chooses, without reference to the other; and neither can be adjourned by action of the crown. To adjourn means merely to interrupt the course of business temporarily, and matters which were pending are simply carried over without change of status. When, however, a session is to be brought to a close, the crown, *i.e.*, the sovereign acting on the advice of the ministers, must intervene. There must be a prorogation; and only the crown can prorogue. Prorogation both ends the session and terminates all pending business, so that a bill which has

[1] Every year, they sit, with only brief adjournments over week-ends and holidays, from the end of January or the first part of February to late July or early August, and from the first week in November until near Christmas.

[2] Newly elected parliaments assemble promptly in all European democracies, as also in the British dominions. Formerly, the Congress of the United States, elected in November, did not enter upon its term until the following March 4, and in many instances did not meet until December following—13 months after election. The twentieth amendment to the national constitution, submitted to the states early in 1932 and proclaimed in effect in 1933, brought our usage belatedly into line with that of the rest of the world. A Congress, elected in November, now begins its term, and also convenes, on the following January 3.

fallen short of enactment will have to start again at the beginning in the next session if it is to be kept alive. Both houses must be prorogued together, and to a definite date, although the opening of the new session may, in point of fact, be either postponed or advanced by later proclamation. Sometimes, too, a proclamation of dissolution is issued before the date arrives, which means that the old parliament will never meet again. Dissolution ends a parliament, though, as we have seen, it also sets in motion the machinery for electing a new one.

HOW A SESSION IS OPENED

The two houses must invariably be summoned to meet simultaneously, and at the opening of a session the members gather, first of all, in their respective chambers. Thereupon an official messenger of the House of Lords invites the commoners to present themselves at the bar of the upper house, where they (or such of them as can squeeze into the small enclosure) hear read the letters patent authorizing the session, followed by announcement by the Lord Chancellor, in the event that the session is the first one of a new parliament, that it is the desire of the crown that they proceed to choose "some proper person" to be their speaker. Headed by the clerk, the commoners withdraw to attend to this matter, and on the next day the newly elected official, accompanied by the members, presents himself at the bar of the Lords, announces his election, and, through the Lord Chancellor, receives, as a matter of form, the royal approbation. Having demanded and received a guarantee of the "ancient and undoubted rights and privileges of the Commons,"[1] the speaker and the members retire to their own quarters, where each takes a simple oath (or makes an affirmation) of allegiance and personally signs the roll.[2]

If, as is not unusual, the king meets Parliament in person, he goes in state, probably the next day, to the House of Lords and there reads to the assembled lords and commoners a document prepared and

[1] The privileges specifically asserted and demanded are free speech, freedom from arrest, access to the crown, and having the most favorable construction put upon proceedings There are, however, other privileges, *e g*, the right to regulate its own proceedings, which the House does not specifically demand on this occasion On this matter of privileges, see W. R Anson, *op. cit* (5th ed), I, 162–198, and A L. Lowell, *op cit*, I, Chap XI A valuable monograph is C Wittke, *The History of English Parliamentary Privilege* (Columbus, 1921).

[2] In the Commons, members are sworn in in batches of five, and the roll is in the form of a leather-bound book opening at the bottom instead of at the side, in the Lords, members are sworn in one by one, and the signatures—"Birkenhead," "Morley," "Rosebery," etc.—are placed on a long sheet of paper which winds around a roller, *i e*, literally, a roll. The oath in both houses is "I, ———, swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King ———, his heirs and successors, according to law So help me, God."

placed in his hands by the prime minister, and termed the Speech from the Throne.[1] In this communication, bearing some analogy to the president's message in the United States, the government of the day comments on the general state of the realm, touches on foreign relations, demands the annual supply for the public services and bespeaks a sympathetic hearing for the requests later to be made on that score, and perhaps says something about the great measures that are to be introduced during the session. Frequently, the speech is couched, however, in colorless, if not cryptic, language, so that curiosity as to what the government's procedure is going to be is left largely unsatisfied. In any event, after the sovereign (or the commission) has withdrawn, the commoners return to their chamber, and the speech is reread and an address in reply voted in each house, accompanied as a rule by debate bringing the policies of the rival parties into clear view, and sometimes extending over several days. Thereupon, committees are set up, bills introduced, and motions made; in short, the houses enter upon their regular activities. In the event that a session is not the first one of a parliament, the election of a speaker and the administration of oaths are, of course, omitted.

SOME QUAINT CEREMONIES

Richard Cobden once spoke of the ceremonies connected with the opening of a session of Parliament as "attended by much barbaric pomp." Certainly they abound in the quaint and picturesque, with something of the naïve, and possibly a little of the ridiculous. One of the humors of the occasion is the search of the corridors, vaults, and cellars of Westminster Palace on the morning of the first day of the session to see that the building is safe for king, lords, and commoners to enter. Reminiscent of apprehensions roused by the famous Gunpowder Plot of 1605, the precaution is perhaps not entirely meaningless in these days of recurring threats of Communist demonstrations. But the picture of twelve lusty Yeomen of the Guard (familiarly known as "beefeaters"), in full Tudor regalia, solemnly trudging through endless rooms, corridors, and subterranean passages carrying Elizabethan lanterns amid a blaze of electric light, and poking among gas fittings and steam pipes for concealed explosives, is calculated to draw a smile. Almost equally amusing is the practice in each house of giving a dummy bill a first reading *pro forma* before the Speech from the Throne is reread by the presiding officer, simply

[1] If the sovereign does not attend in person, he is represented by five scarlet-robed lords commissioners, and the speech is read by the Lord Chancellor. Queen Victoria, even though present, usually requested that official to read the document.

to show that the house has a right to debate other matters than those mentioned in the Speech and to initiate measures of its own. This sacred right once vindicated, the measure is promptly put aside and forgotten. Each house uses the same bill on every such occasion, and in the Commons an identical "property" document has been preserved for the purpose in the drawers of the table since the present chamber was first occupied in 1852.

HOW A SESSION IS CLOSED

The ceremonies that bring a session to a close are the same whether it is expected that the existing parliament will meet again or it is known that prorogation is merely preliminary to a dissolution. In earlier days, the king usually appeared in person, and (the commoners having been summoned to the bar of the Lords) read a Speech from the Throne announcing the prorogation. Nowadays, however, a session is customarily closed, just as it is sometimes opened, not by the king in person but by his commissioners, the prorogation speech being read by the Lord Chancellor. In any case, the communication never fails to congratulate "my lords and gentlemen" on the useful laws they have passed and to thank them for the supplies they have granted. Even if a dissolution is definitely intended, however, it scrupulously refrains from saying so, or even hinting at the fact. The ceremony over, the Lord Chancellor gathers up his long robes, and, attended by the purse-bearer and the mace-bearer, walks down to the bar of the Lords and disappears; so far as the upper chamber is concerned, the session is ended. In the Commons, however, it remains for the speaker to return, to "inform" the members where he has been, and to read the speech; whereupon, walking backwards, bowing to his empty chair, and closely followed by the sergeant-at-arms bearing the mace, he too disappears. If a dissolution is contemplated, everybody knows it, even though there has been such remarkable official reticence about it. The prospect need not disturb the peers; they know that they will be summoned again to the red benches. But the commoners are situated differently. They must go back to their constituencies—or find new ones—and make a fight for reelection, with the outcome in many cases uncertain. Many of them will not be seen again as members, for, as a defeated commoner once sorrowfully remarked, it is far easier to go to the country than to return from it.[1]

[1] The ceremonies connected with the opening, adjournment, prorogation, and dissolution of a parliament are described at greater length in W R Anson, *op cit.* (5th ed), I, 63–72, and C F M Campion, *An Introduction to the Procedure of the House of Commons* (London, 1929), 74–84

SITTINGS OF THE HOUSES

Both houses of the American Congress regularly meet at noon, on all week-days of a session except as adjournments are taken for lengthier periods. The British House of Commons, under its standing orders, meets on the first four working days of the week at 2:45 P.M., on Friday (reserved for private business, petitions, notices, and motions) at 11 A.M., and on Saturday not at all except by special arrangement. As at Washington, the earlier portions of the day are reserved for committee work. Except on Friday, when the rules require the speaker to adjourn the House at 4:30, "notwithstanding there may be business under discussion," sittings continue uninterruptedly throughout the afternoon and into the night, to 11:30 (the rules say) unless certain specified kinds of business are under consideration, in which event there is no limit except the endurance of the members. All-night sittings are not unknown. Under less pressure of work, and disinclined to lengthy debate, the House of Lords meets only on Monday to Thursday inclusive, and from 4:30 to 6:30 or thereabouts.

A sitting is opened in the Commons by the stately march of the speaker, accompanied by chaplain, sergeant-at-arms, and mace-bearer, up the center aisle to the table; whereupon the chaplain reads a psalm (always the 67th) and three short prayers, the members facing the aisle during the former and, for some unknown reason, turning toward the wall during the latter. Visitors are not admitted to the galleries until prayers are over; and members of the ministry are conspicuous for their absence, not—as one writer facetiously suggests—because they are less in need of the benefits of prayer than are the private members, but because, unlike the latter, they are not under the necessity of being on hand to reserve their seats. Prayers ended, the mace is placed upon the table, the speaker assures himself that a quorum (40) is present, the doorkeeper shouts "Mr. Speaker at the chair"—and the day's business begins. The ceremony in the House of Lords is substantially the same, the ecclesiastical members taking turns in reading prayers.

"WHO GOES HOME?"

Equally with the lighted lanterns of the beef-eaters, the cry that resounds through lobby and corridor when at the close of a sitting the speaker leaves the chair carries one back to the London of long ago. The principal doorkeeper starts it. Stepping a pace or two into the lobby, he shouts "Who goes home?" The policemen stationed in the lobby take up the cry, which is echoed by their fellows at the doors of the library and the smoking-room, and wherever else they are likely to be heard

by the more or less scattered members. Two hundred years ago, going home at midnight through the dimly lighted and poorly policed streets leading from Westminster to residential London was a hazardous undertaking, and hence at intervals during the evening squads of yeomen from the Tower were sent over to act as escorts to members desiring to leave. "Who goes home?" was the call employed to round up the departing groups, and although London's streets are now practically as safe by night as by day and the convoy services of the beefeaters have long since been dispensed with, "Who goes home?" still breaks upon the midnight air exactly as when Charles II or Queen Anne reigned. More than that, as the members gather up papers and file out, the attendants still ply them with the admonition, "The usual time tomorrow, sir, the usual time tomorrow," precisely as if every one did not know that if there was any doubt about the House resuming business at 2.45 tomorrow, every newspaper would find material in the fact for a front-page story. Verily, as Sir Courtenay Ilbert has remarked, "the parliament at Westminster is not only a busy workshop; it is a museum of antiquities."[1]

OFFICERS OF THE HOUSE OF COMMONS

Some of these quaint usages could be given up with no harm done except to make Parliament less picturesque. But officers, committees, rules —to which we now turn—are a different matter, they are indispensable. The most conspicuous and important officer in each house is, of course, the man who presides, *i.e.*, in the House of Commons, the speaker, and in the House of Lords, the Lord Chancellor. There are, however, other officers of dignity and authority. In the lower house, these are, chiefly, the clerk and his two assistants, the sergeant-at-arms and his deputies, and the chairman and deputy chairman of ways and means (now more commonly known as the chairman and deputy chairman of committees), to which may be added, as an officer of ceremonial importance, the chaplain. The clerk and the sergeant-at-arms, together with their assistants, are appointed for life by the king on nomination of the prime minister; the chaplain is appointed by the speaker, the chairman and deputy chairman of committees are, like the speaker, elected by the House for the duration of a parliament, although, being (unlike all of the others) party men, they retire when the ministry that has nominated them goes out of office.

Little comment on the functions and duties of these officers is

[1] Preface to J. Redlich, *The Procedure of the House of Commons*, I, p. vi.

required, except in the case of the speaker. The chaplain appears at the opening of each sitting and reads the psalm and prayers. The clerk, whose place, with his aides, is at the table, signs all orders of the House, endorses bills sent or returned to the Lords, reads whatever is required to be read during the sittings, records the proceedings of the chamber, has custody of all records and other documents, and, in collaboration with the speaker, supervises the preparation of the official journal.[1] The sergeant-at-arms attends the speaker, preserves decorum in the chamber and its precincts, directs the doorkeepers and messengers, enforces the House's orders, executes warrants issued by the speaker in its name, and presents at the bar persons qualified or ordered to appear there. The chairman of committees (in his absence, the deputy chairman) presides over the deliberations of the House when the body sits as committee of the whole, and at other times on request of the speaker, and exercises general supervision over "private bill" legislation.[2]

THE SPEAKER: The speakership is an office of much dignity, honor, and power. No one can say precisely when it originated. Sir Thomas Hungerford, elected to the post in 1377, seems to have been the first to bear the title. But he is reported to have had predecessors, and it is likely that some such office existed from the very beginning of the House. In the early days, it will be remembered, the commoners had no direct part in legislation. All that they could do was to make requests of the king for new or amended laws or for redress of grievances; and the speaker was the man whom they commissioned to bear their petitions and urge them upon the sovereign's attention. He got his title from being the spokesman of the House in its dealings with the crown—from speaking *for*, not *to*, his fellow-members. He was never supposed to do much talking in the House, and nowadays he does none at all except in performing his duties as moderator.

1. ELECTION It was a triumph for the House of Commons when it gained the right to choose its own speaker. In earlier days, the king appointed; and long after the office became nominally elective the usage was, as Coke testified in 1648, for the sovereign to "name a discreet and learned man" whom the Commons then proceeded to "elect." To this day, the choice of the House is subject to the king's approval. No speaker-elect, however,

[1] Sir Thomas Erskine May, whose monumental treatise on English parliamentary procedure is cited frequently in this chapter and succeeding ones, held the office of clerk for many years.

[2] A private bill is one having in view the interest of some particular locality, person, or group of persons, rather than of the people generally. See p. 234 below.

sergeant-at-arms, preserves decorum suitable to a deliberative assembly, adjourning the House if disorder becomes too serious to be dealt with by the force at the command of the sergeant-at-arms. He interprets and applies the rules. He puts questions and announces the results of votes. He decides points of order, and for that purpose must be a thorough master of the technicalities of procedure. Hardly a situation can arise that has not arisen before, and if the speaker knows the precedents he cannot go far wrong. Knowing the precedents of the British House of Commons is, however, no simple matter. In any event, the speaker's rulings are final; "the Chair, like the Pope," humorously replied Speaker Lowther when asked how errors that he made could be rectified, "is infallible." The only requirement is that the speaker shall make his rulings in such fashion that the members will have complete confidence that they represent, not the speaker's own will imposed upon the House, but rather the will of the House itself as embodied in its rules and precedents. Under the Parliament Act of 1911, it falls to the speaker to decide (if there is doubt) whether a given bill is or is not a money bill—a decision which may, of course, go far toward determining the fate of the measure. Upon him also occasionally devolves the task of appointing the members of great conferences or commissions, such as the one which did the spadework preliminary to the electoral reform act of 1918. Indeed, he sometimes presides over such conferences.

3. NON-PARTISAN CHARACTER

In all of these activities the speaker refrains scrupulously from any display of personal sympathies or partisan leanings. He never takes the floor to engage in debate, even when the House is sitting as committee of the whole. He never votes except to break a tie, and in the rare instances in which this becomes necessary he, if possible, gives his casting vote in such a way as to avoid making the decision final, thereby giving the House another opportunity to consider the question. The constituency which he represents is, of course, in effect disfranchised; but it has its reward in the distinction which he brings it, and it almost unfailingly reelects him to his seat without opposition. Outside, no less than inside, of the House, the speaker abstains from every appearance of partisanship. He never publicly discusses or voices an opinion on party issues; he never attends a party meeting, he has no connections with party newspapers; he never sets foot in a political club; he does not even make a campaign for his own reelection. The speaker of the American House of Representatives is, quite frankly, a party man—with, to be sure, less power that can be used for partisan purposes than before the reforms of 1910–11, but nevertheless

an official who serves, and is expected to serve, the interests of his party so far as it can be done without too flagrant unfairness to the opposition. The contrast with the speakership at Westminster is indeed striking. This is not to say that the American speakership is necessarily on a wrong basis. Traditions and circumstances differ in the two countries, and the history of the American, as of the English, office has, on the whole, been honorable. But, as would be expected, the deference paid the chair at Westminster is considerably greater than at Washington, having often been, as Sir Courtenay Ilbert remarks, "the theme of admiring comment by foreign observers."[1]

4. PERQUISITES

As is befitting so assiduous a servant of the state, the speaker has certain perquisites. He has a salary of £5,000 a year. Since 1857, he has had as his official residence a wing of the Palace of Westminster extending from the Clock Tower to the Thames; and there, being repressed politically but not socially, he gives numerous dinners and other entertainments. In the official order of precedence, as fixed by an order-in-council of 1919, he ranks next after the Lord President of the Council, which makes him the seventh subject of the realm. And when he finally chooses to retire, he is elevated to the peerage as a viscount and liberally pensioned.[2]

COMMITTEES IN THE HOUSE OF COMMONS

Legislative bodies the world over save time and gain in efficiency by delegating preliminary consideration of bills and other proposals to committees. The British House of Commons is no exception to the rule. As early as the reign of Elizabeth, it was not unusual to refer a bill, after its second reading, to what we should now call a select committee, *i.e.*, a group of members specially designated to study the measure and report on it, and in the last half-century—notably since 1919—the amount of service required from committees has been steadily increasing. The committees now employed are of five main types: (1) the committee of the whole

[1] *Parliament*, 140–141.

[2] Upon retiring from the speakership in 1928, Mr. John H Whitley, however, broke with precedent of more than a hundred years by declining the offer of a peerage He assigned "personal reasons" for his decision The earlier history of the speakership is recorded conveniently in E Porritt, *Unreformed House of Commons*, I, Chaps xxi–xxii, and more fully, in a biographical fashion, in A I Dasent, *The Speakers of the House of Commons from the Earliest Times to the Present Day* (New York, 1911). The best brief description and interpretation of the office is J Redlich, *Procedure of the House of Commons*, II, 131–155, and a great deal of interesting and significant information can be gleaned from J W. Lowther, *A Speaker's Commentaries*, 2 vols (London, 1925). The author of these *Commentaries* —the later Lord Ullswater—was speaker from 1905 to 1921.

house, (2) select committees on public bills, (3) sessional committees on public bills, (4) "grand," or standing, committees on public bills, and (5) committees on private bills.

1. COMMITTEE OF THE WHOLE

The committee of the whole consists of the entire body of members, and is distinguishable from the House itself only in that (1) it is presided over, not by the speaker, but by the chairman of committees (or his deputy), who sits, not in the speaker's chair, but in the clerk's chair at the table, (2) the mace, which is the speaker's symbol of authority, is for the time being placed under the table, (3) a motion need not be seconded, (4) the "previous question"—aimed at cutting off debate—cannot be moved, and (5) members are allowed to speak any number of times on the same question. Procedure is thus much less formal and restricted than in the House as such, making for flexibility and freedom, although hardly for speed, in the handling of vital and complicated matters. When its work is done, the committee "rises," the House again comes into session, the speaker resumes the chair, and the chairman of the committee reports, for adoption by the House, whatever conclusions the committee has arrived at.

Until some 40 years ago, bills of a public nature were far more commonly referred to committee of the whole than otherwise. After, however, provision was made in 1907 for more extended use of standing committees, the proportion referred to the larger body fell off, and nowadays measures go to committee of the whole only if they are (a) money bills or (b) bills confirming provisional orders,[1] or if the House so designates. All estimates of revenue and expenditure regularly submitted by the government, and all resolutions leading up to the great appropriation and finance acts,[2] are considered in committee of the whole—committee of the whole on supply (or simply committee of supply) when the business in hand relates to appropriations, committee of ways and means when to revenues. From the viewpoint of the cabinet, however, it is decidedly advantageous to have *all* bills in which it is seriously interested considered in committee of the whole rather than sent off to smaller and more isolated committees; and in practice nowadays all really important government measures are so handled. In committee of the whole, too—although procedure remains more flexible—the political atmosphere is no longer materially different from that of the House as such. Party discipline is almost equally in evidence; the

[1] See p. 236 below.

[2] See pp. 240–245 below.

minister in charge dominates debates, voting is controlled by the whips, a government defeat is a serious matter.[1]

2. SELECT COMMITTEES

Select committees consist, as a rule, of 15 members, and are created from time to time to investigate and report upon specific subjects on which legislation is pending or contemplated. It is through them that the House collects evidence, examines witnesses, and in other ways obtains information required for intelligent action. After a select committee has fulfilled the immediate purpose for which it was set up, it passes out of existence. Each such committee chooses its chairman, and each keeps detailed records of its proceedings, which are included along with its formal report, in the published parliamentary papers of the session. Formerly, the members were usually designated by the committee of selection, which itself consists of 11 members chosen by the House at the beginning of each session. But nowadays the names of the persons who are to constitute the committee are proposed in the motion of the member who moves the committee's appointment. The number of select committees is, of course, variable, but rarely small; something like a score are usually provided for in the course of a session. As a rule, eight or ten are set up for an entire session, and hence are known as sessional committees. Of these, the committee of selection is itself an example.

3. STANDING COMMITTEES: A ORIGIN AND NATURE

Not until 1882 did the House of Commons arrive at the point of providing for standing committees—originally known as "grand" committees. At first, there were but two, later four, still later six; and at present there are five, all set up at the opening of the first session of a new parliament and lasting (with such changes of personnel as may prove necessary) until that parliament is prorogued. The device was accepted grudgingly and only because measures had grown too numerous and complicated to be considered exclusively (as the House would have preferred) in committee of the whole; and, being looked upon simply as substitutes for the committee of the whole, the standing committees conform to that body in nature and procedure as closely as conditions permit. To begin with, all are very large. Since 1926, each has consisted of from 30 to 50 members, with 20 as a quorum; furthermore, for the consideration of any particular bill the committee of selection, which designates all members (after conference with government and opposition leaders) may add from 10 to 35 other persons—bringing the possible maximum to the astonishing total of 85. In the second place, standing committees, like the committee of the whole,

[1] W I Jennings, *Parliamentary Reform* (London, 1934), 79.

are committees on no definite subjects or branches of legislation; instead, they are merely promiscuous groups of members, designated as A, B, C, and D committees, and receiving measures assigned to them by the speaker indiscriminately.[1] To be sure, the members specially added for the consideration of particular bills are supposed to be chosen with regard to their acquaintance with the subjects with which the bills deal. But of the regular membership (except, as explained, in the case of the Scottish committee) this is not, and cannot be, true. The plan is thus markedly different from that found in the United States and in Continental parliamentary bodies, where, almost without exception, standing committees are made up with a view to handling bills relating to specified subjects—foreign affairs, finance, commerce, agriculture, and what not. Further important contrasts with American standing committees, *e.g.*, in the national Senate and House of Representatives, appear in the fact (1) that while the British committees are made up so as to include representatives of all the major political parties, there is no effort to achieve any very exact proportioning of party quotas, and (2) that there is no such rigid method of determining the rank of committee members, including the succession to chairmanships—committee chairmen being chosen, indeed, from its own number by a "chairman's panel for standing committees," named by the committee of selection.[2]

B. WORKINGS

Notwithstanding that virtually all major government bills are handled only in committee of the whole, standing committees nowadays have so much to do that the House has found itself obliged to amend its rules so as to permit such committees to sit while the House itself is in session, subject to the very natural requirement that when a division is called in the House, committee proceedings shall be suspended long enough to permit the members to go to the chamber and vote. Having passed second reading, and therefore having been approved by the House in respect to the principles involved, bills sent to standing committees are expected to be scrutinized and polished so thoroughly that, except in the case of those that stir the most differences of opinion, they will, on being reported out, consume no great

[1] The fifth committee, known as the committee on Scottish affairs, is, however, of a different sort. It consists of all of the 74 Scottish members of the House, plus members added for the consideration of particular measures, and all public bills relating to Scotland (except money bills and bills to confirm provisional orders) are referred to it.

[2] Chairmen of committees on private bills are named by the committee of selection itself, while select committees on public bills, as has been indicated, choose their own chairmen.

amount of additional working time of the House as a whole. They may, of course, be reported out in an amended form which the cabinet—their real author and sponsor in the majority of cases—would not prefer; and this may give rise to extended discussion and eventual compromise. As already noted, the cabinet would, indeed, be glad if the time of the House permitted, to have no committee reference at all except to committee of the whole, where it can readily keep its hands on the deliberations. Government proposals, however, rarely encounter at Westminster the rough usage in standing committee which in France notoriously adds to the miseries of ministerial life.[1] In contrast with the situation in practically all American legislative bodies, where many—indeed most—measures "die in committee," *i.e.*, are permanently pigeonholed, every bill referred to a standing committee in the House of Commons is required to be reported out.

C. SOME PROPOSALS

The standing committee system in the House of Commons has, on the whole, proved its worth. It is interesting, however, to observe that there is growing sentiment in favor of changes in it, especially such as would (1) reduce the number of members to from 10 to 30 (perhaps an average of 20), with a view to more efficient deliberation, and (2) secure more expertness, both on the part of committee members themselves and by providing means for obtaining informed advice from civil servants and others.[2] Still beyond this, it is proposed that the number of standing committees be raised to ten or a dozen and (what is especially important) be constituted so as to function each in a particular field—a field, furthermore, corresponding rather closely to that of one of the great executive departments, such as the Home Office, the Ministry of Health, or the Board of Trade. This, of course, would mean a shift in the direction of the standing committee system of France or of the United States, in which each committee specializes in some major subject of legislation, becomes more or less expert in it, and handles only bills that relate to it. It is even proposed that, once the system were revamped on the lines suggested, *all* bills should be "sent upstairs," *i.e.*, referred to standing committees, with the committee of the whole entirely abandoned, as indeed it has been (except for one or two minor purposes) in the American Senate.[3]

[1] See p 524 below.

[2] Public hearings, which have so large a place in American committee procedure, are practically unknown in European legislatures At the risk of encouraging "lobbying," those who seek to improve the British committee system favor greatly extended provision for giving committees the advantages of "outside evidence"

[3] For a favorable discussion of these and related proposals, see W I Jennings, *Parliamentary Reform*, Chap IV. A fuller account of the British standing committee

ORGANIZATION OF THE HOUSE OF LORDS

What of the scheme of organization in the more aristocratic and leisurely assemblage at the opposite end of Westminster Palace? Here, unlike in the Commons, the officers are almost all appointive. The most conspicuous—although less powerful than might be expected—is the severely judicial figure in big gray wig and black silk gown who occupies the woolsack, *i.e.*, the Lord Chancellor. The duty of presiding at sittings of the House of Lords is, of course, only one of many that fall to this extraordinary dignitary. Any man who reaches the lord chancellorship is pretty certain already to be a peer. If he is not, the defect can easily be, and invariably is, remedied. There is, however, no legal necessity that this be done, because the theory is that the woolsack is outside the precincts of the chamber; and the presiding official, *as such*, is not a member. As already intimated, the powers allowed the Chancellor fall far short of those commonly assigned a moderator. For instance, if two or more members simultaneously attempt to address the chamber, the House itself, not the chair, decides which of them shall have the floor. Order in debate is enforced, not by the Chancellor, but by the House, and when the members speak, they address, not the chair, but "My Lords." As a peer, the Chancellor may, and regularly does, speak and vote, on party lines, like any other member; but in no case does he have a casting vote.

The committee system is broadly similar to that found in the House of Commons, and hence does not call for description. Besides the committee of the whole, large use is made of sessional and select committees; and there is a so-called "standing" committee for textual revision, made up, however, at the beginning of each session, to which every bill, after passing through the committee of the whole, is referred unless the House orders otherwise. Sessional committees consist either of all members present during the session (being thus identical in personnel with the committee of the whole) or of smaller, and sometimes indefinite, numbers of members. Select committees are named by the House itself, usually with the power to appoint their own chairmen; and proposals may be referred to them at any time between the second and third readings when additional information is desired.

system will be found in G F. M. Campion, *op. cit.*, Chap. vii, and a characterization of the system in the American Congress in F. A. Ogg and P. O Ray, *op. cit.* (6th ed), Chaps. xviii–xix. The committees which handle private bills in the House of Commons are dealt with in another place (see p. 234 below).

CHAPTER XII

Parliament at Work: Law-Making

TURNING to the ways in which Parliament carries on its various activities, we find at the outset that, whatever the business in hand, both houses deal with it in accordance with accepted rules of procedure. In earlier days, these rules developed slowly and consisted almost entirely of unwritten precedent and usage. In the leisurely eighteenth century—a golden age of parliamentary oratory, but an epoch of relatively little major legislation—this customary law (in the House of Commons, at all events) took on the aspect of a vast, technical, mysterious, stereotyped body of practices which may have served well enough at the time, but which in the new era after 1832 grew increasingly cumbersome and unsatisfactory.[1] The "keen wind of democracy" had begun to whistle through the Palace of Westminster, popular demand for remedial and constructive legislation mounted to unprecedented proportions, multiplying problems tested parliamentary efficiency as never before, and to a steadily increasing extent law-making, instead of being left, in the main, to private members, became a matter of ministerial leadership and initiative. Under these changed conditions, the House of Commons, floundering amid a welter of time-consuming technicalities, began to cut its way out—doing so, naturally, by deliberately adopting new or revised rules in the interest of economy of effort and of time. Gradually, the jungle was to some extent cleared and the chamber came into possession of a considerably simplified scheme of procedure, in which custom still played an important rôle, but with "orders," *i.e.*, definitely adopted regulations, holding an increasingly prominent position. And this is the situation today. Custom and precedent still contribute a great proportion of the rules under which the work of the House is carried on. But adopted orders—covering such matters as frequency and duration of sittings, allotment of time to different kinds of business, stages in the consideration of bills, kinds and composition of committees—supplement, summarize, and

RULES OF PROCEDURE

[1] C Strateman, *The Liverpool Tractate, An Eighteenth-Century Manual on the Procedure of the House of Commons* (New York, 1937).

clarify. One is reminded of the way in which the general body of English law, or indeed the English constitution itself, took its present form; as "a supplementary chapter to the book of procedure," adopted orders or rules bear the same relation to the customary law of each house that acts of Parliament bear to the common law of the country.

PRESENT FORM AND STATUS

In the United States, the Senate is organized continuously, and its adopted rules remain in effect until modified or repealed; whereas the House of Representatives is organized afresh at the opening of every new Congress and must start off on each occasion by readopting the rules of the preceding House, in identical form or with such changes as dissatisfied members may be able to procure. The British House of Commons is in this matter nearer to the position of our Senate. It is, to be sure, reorganized following every election. But the bulk of its written rules, once adopted, remain in effect, under the caption of "standing orders," as long as the House does not see fit to alter or displace them. Some, indeed, remain in effect indefinitely, as "general orders," without being classified technically as "standing." On the other hand, there are also "sessional orders," adopted for the duration of a session only. By simple majority vote of the House, any rule can be suspended, amended, or repealed at any time. But again we must bear in mind that to an amazing extent the basis for settling the steady stream of procedural questions that arise is to be found, not in the adopted, printed orders or rules, but in the uncodified, and largely unwritten, customs and precedents of the House. The speaker (at all events, with the aid of experts) must know these quite as well as the formal rules; and this is why his duties as moderator are so exacting. Few other members make any pretense to knowing them in more than a rough sort of way. Lord Palmerston admitted that he never fully mastered them; Gladstone was on many occasions an inadvertent offender against them. There was something more than humor in Parnell's reply to the Irish member who asked how he could learn the rules. The reply was, "By breaking them." [1]

[1] For three-quarters of a century, the standing orders, or rules, of the House of Commons have been printed in successive editions of a handbook entitled *The Manual of Procedure in the Public Business*, compiled by the clerk of the House. Since 1911, there has also been published, from time to time, *Standing Orders of the House of Commons*. Paralleling these are *Standing Orders of the House of Lords* and *Companion to the Standing Orders of the House of Lords on Public Business*. A very good sketch of the historical development of procedure will be found in G. F. M. Campion, *An Introduction to the Procedure of the House of Commons*,

DAILY ORDER OF BUSINESS IN THE HOUSE OF COMMONS

It is in the rules (mainly the standing orders) that one will find laid down the sequence of ceremonies and actions that go to make up the routine of a parliamentary working day. Briefly, this order of business in the House of Commons is as follows. At the regular opening hour, which, as we have seen, is 2:45 P.M., the speaker's procession moves down the central aisle, the speaker in wig and gown, the chaplain in gown and stole, the sergeant-at-arms with his sword, and the mace-bearer with the mace. A psalm is read, followed by three short prayers. Thereupon the speaker takes the chair and business begins. First comes consideration of such private bills as may be listed on the printed orders of the day, followed by the presenting of petitions. For reasons that will be explained later, the former takes little time.[1] The latter also makes no heavy demands; for fewer petitions are presented now than formerly, and all that happens is that members having such communications to submit rise, announce the fact (often without so much as telling what the petition requests), and, walking up the aisle, drop the papers into the yawning mouth of a big black bag that hangs at the left of the speaker's chair.[2] The first stage of the sitting that draws much interest is "question time," when members may interrogate the ministers concerning administrative or other matters. As we shall see, this right of question is exercised freely, and it is hardly necessary to add that question time is often the most interesting portion of the day's proceedings. Then comes the introduction of new members, if there happen to be any, after which the speaker calls upon the clerk to read

Chap. i; and the Standing Orders of the House of Commons (as of 1935) will be found conveniently reprinted in R. K. Gooch, *Source Book*, 277–308.

Legislative procedure in all English-speaking lands, and to a considerable extent in non-English-speaking countries as well, is based on the historic usages of the British Parliament. In every one of the British dominions, the constitution stipulates that, in the absence of specific direction to the contrary, the procedure of the legislature shall be in accordance with parliamentary procedure at Westminster. The manual of procedure which Thomas Jefferson drew up when serving as president of the Senate of the United States, and which is still the kernel of the great body of procedural rules developed at Washington, was based definitely upon eighteenth-century British practice. A treatise on that practice, written by Pierre Dumont but inspired by Jeremy Bentham, became a major influence in the framing of the rules of procedure for European parliaments which came into existence in the first half of the nineteenth century.

[2] See pp. 234–235 below.

[1] Record of all petitions presented is made in the journal of the House, and a committee on petitions looks over the documents to see that they are in proper form. But rarely are they heard of again. "As far as practical purposes are concerned, petitions might as well be dropped over the Terrace into the Thames as into the mouth of the appointed sack." H. Lucy, *Lords and Commoners*, 106

the orders of the day. The title of the first public bill listed on the day's "order paper" is thereupon read, and debate begins. The benches, empty for the most part during the dinner period, fill up as the evening wears on, and frequently the interest rises until the climax is reached in a final burst of oratory as Big Ben overhead booms the midnight hour. Sometimes the sitting extends later—occasionally, at times of special stress, throughout the night, or even longer. But ordinarily adjournment takes place by twelve o'clock, when the passer-by may still hear the time-honored call, "Who goes home?," and the attendants' ancient admonition, "The usual time tomorrow, sir; the usual time tomorrow."

CHARACTER OF DEBATE

Etymologically, Parliament is a place of talk, or discussion, and while nowadays it does many important things without talking much about them —at all events on the floor—it is most completely itself, and most interesting to observers, when engaged in the give and take of debate. In the House of Lords, as we have seen, all speeches are addressed to "My Lords," and the chamber itself decides who shall have the floor if two or more members seek it at the same time. In the Commons, however, all remarks are addressed to "Mr. Speaker," who, assisted somewhat by lists put in his hands by the party whips, indicates the member who is to go on with the debate when another has left off speaking. In so far as possible, he will give both sides an equal opportunity for expression of opinion; and he will not permit a member to speak twice upon the same question, unless it be to explain a portion of his speech which has been misunderstood, or in case an amendment has been moved which, in effect, constitutes a new question. In accordance with long-established usage (now embodied in the rules), he will not allow a member to read a speech from manuscript;[1] and he not only may warn one who is straying from the subject, or is merely repeating things he has already said, but may require him, after the third unheeded admonition, to terminate his remarks and give way to a fresh debater. Notwithstanding a good many tumultuous episodes in its history, especially at the hands of the Irish Nationalists, and more recently of the Clydeside Laborites, the House of Commons rates high on the score of decorum. This does not mean, however, that the 50 to 100 members ordinarily to be observed sprawling on the green benches—unless it be on budget night or some other "full-dress" occasion—are always attentive to what is going on, or deferential toward those who are

[1] The use of notes is permissible, and the rule against reading speeches is not always enforced rigorously.

addressing them. Looking down from the visitors' gallery, one is apt, on the contrary, to see members casually strolling into and out of the chamber, others chatting and occasionally breaking into loud laughter, a few sitting abstractedly with their hats tilted over their eyes, a few waiting impatiently for a chance to make speeches of their own, still fewer listening with some appearance of genuine interest, while from the deep recesses of the speaker's chair sounds the reiterated "Order, order," designed to keep the confusion within bounds reasonably compatible with the historic dignity of the place.[1]

PARLIAMENTARY ORATORY

Members are not more attentive to formal debate because many, if not most, of the speeches are not worth listening to, and because even if they were, they would, as every one knows, have little or no effect on the fate of the measure under consideration. More and more, the actual work is done in committee, where—even in committee of the whole—discussion of an informal, conversational nature comes to closer grips with the matters in hand. The truth is that the House no longer has either time or taste for the expansive debates of the old days. Business crowds upon it, rules designed to expedite work tighten up from decade to decade; impatient members puncture bubbles of mere grandiloquence with satirical thrusts that drive all except the most thick-skinned offenders from the floor. That parliamentary oratory is not what it once was cannot be denied. But whether the change represents any real loss is another matter. Much of the eloquence that used to crowd the benches was mere emotionalism; much more was only stateliness and ponderousness of speech, with no discernible originality or richness of thought. It may have been effective once; on more than one occasion in earlier days, the records tell us, the House of Commons was so stirred by impassioned speeches that adjournment was taken to give members time to recover from the overpowering effects of a flight of eloquence. But nowadays the member who wants what he says to be listened to will speak briefly

[1] Members of the House are required by statute to be in attendance while granted leave of absence on account of ill health or other urgent circumstances. This means only, however, that they must remain in London and prosecute their parliamentary work with reasonable fidelity, most of their time will ordinarily be spent in the lobbies, in the library, in committee rooms, on the terrace at clubs and elsewhere—but not on the benches in the House. Regularity of attendance is [illegible] somewhat by provision, in 1911, of an annual salary of £400 for members already in receipt of salaries as ministers, as officers of the House, or as members of the royal household. Although increased in 1937 to £600, the salary is [illegible] more than a step forward in the direction of [illegible] and [illegible] still barely covers the added expenses which a seat in Parliament [illegible] for members under the necessity of supporting their families by [illegible] the prevailing [illegible] of prosperity.

and to the point. He may easily produce more of an impression in 10 minutes than in two hours; indeed, the surest way to empty the benches, and to gain personal unpopularity besides, is to run beyond the 20 minutes within which, proverbially, converts to a cause, if won at all, are gathered in. Rare indeed in these times is the parliamentary debater of whom it could be written, as Ben Jonson wrote of Bacon, "the fear of every man who heard him was lest he should make an end." [1]

RESTRICTION OF DEBATE

Early in the history of parliamentary bodies it was found necessary to provide ways of bringing debate to a close, especially as a means of circumventing the obstructionist tactics of filibustering minorities. The Senate of the United States did, indeed, get along until 20 years ago without any formal devices for this purpose, and the British House of Lords still does so. As early as 1604, however, the House of Commons adopted a rule under which a motion that "the previous question be now put," if carried, caused a vote on the main question to be taken forthwith; and a similar regulation found a place in the first set of rules adopted by the national House of Representatives in the United States in 1789. In both cases, the "previous-question" rule has been found useful, but insufficient. Other rules have been adopted empowering the speaker to refuse to entertain a motion which he considers dilatory; the House of Commons forbids a member to speak more than once (except in committee) on a question, and the House of Representatives allows a member only one hour for a speech (with certain qualifications in both instances); and both bodies have brought into play various special regulations or processes which pass under the general name of closure.

FORMS OF CLOSURE:

Closure in the House of Commons takes three principal forms, *i.e.*, simple closure, the "guillotine" (or closure by compartments), and the "kangaroo." The previous-question rule served reasonably well until toward the end of the nineteenth century. Then, however, it proved insufficient as a defense against peculiarly ingenious and persistent obstructionism

[1] It is generally agreed that the House of Lords maintains a higher level of debate than the House of Commons. There is more time, there is at least as much ability, and only the leaders participate. A suggestion of Prime Minister Baldwin in 1925 that the debates of the House of Commons be broadcast by radio met with an unfavorable response. Arguments, it was feared, would tend to be addressed to the listeners-in rather than to the House itself. On British parliamentary oratory in general, see H. Lucy, *Lords and Commoners*, Chap. IV, and on debate in the House of Commons, J. Redlich, *op cit*, III, 51–69, and T. E May, *Treatise on the Law, Privileges, Proceedings, and Usage of the House of Commons* (13th ed., London, 1924), Chap. XII.

indulged in by the Irish Nationalists, and in 1881 the House adopted a stronger device which in the following year found a place in the standing orders. The Nationalists have disappeared from the scene. But the new "urgency" rule, recast in 1888, has been found too useful to be given up. "After a question has been proposed," it reads,

1. SIMPLE CLOSURE

"a member rising in his place may claim to move 'that the question be now put,' and unless it shall appear to the chair that such a motion is an abuse of the rules of the House, or an infringement of the rights of the minority, the question 'that the question be now put' shall be put forthwith and decided without amendment or debate." Discussion may thus be cut off at any time—even while a member is speaking—and a vote precipitated. At least 100 members (20 in a standing committee) must, however, have voted with the majority in support of the motion.

2. THE "GUILLOTINE". CLOSURE BY COMPARTMENTS

Closure in this form worked well enough when the object was merely to terminate debate upon a single question. But it, in turn, proved inadequate when applied to large, complicated, and hotly contested measures. As early as 1887, when a bill of this nature relating to the administration of justice in Ireland was before the House, a more drastic procedure was brought into operation under which a motion might be made and carried that at a stipulated hour on a stipulated day the presiding officer should put any and all questions necessary to end debate on the bill, irrespective of whether every part of the measure had by that time been discussed. From the point of view of government leaders bent upon securing the passage of their bills, this was an effective and useful device; and whereas it had been invented purely as an extraordinary remedy to meet a particular situation, it was called into play on later occasions and tended to become a regular feature of parliamentary practice. The drastic nature of the procedure, however, won for it the designation of "guillotine"; and it could hardly have been expected to be popular with the rank and file of the members; besides, experience showed that it was likely to result in the earlier clauses of a bill being considered at length and the later ones not at all. Accordingly, when Gladstone's second home rule bill was before the House in 1893, a new plan was adopted, under which the House agreed in advance upon an allotment of time to the various parts of the measure, debate on each part being terminated when the appointed time arrived and a vote thereupon taken on that part. Known sometimes as "closure by compartments," this improved form of guillotine became a regular feature of House procedure; and it is interesting to observe that

debate is frequently limited on similar lines in the American House of Representatives—occasionally in the Senate also—by advance agreements on the amount of time during which discussion shall be allowed to continue on a given bill or part thereof.

3. "KANGAROO" CLOSURE

The third form of closure, nicknamed "kangaroo," has arisen from occasional authorization of the speaker (and chairman in committee of the whole) to single out (hopping, kangaroo fashion, from proposal to proposal) those proffered amendments to a motion or bill which he deems most appropriate for discussion; whereupon those particular amendments can be debated and no others. Closure in this form was regularized by standing order in 1919. It imposes heavy responsibilities on the presiding officer; but it is a tribute to his impartiality, and it saves much time.[1]

VOTES AND DIVISIONS

When debate upon the whole or a portion of a measure ends, a vote is taken. It may or may not involve what is technically known as a "division." The speaker (or chairman in committee of the whole) puts the question to be voted on and calls for the ayes and noes. He announces the apparent result, and if his statement of it is not challenged, the vote is so recorded. If, however, there is objection, the order "Clear the lobby" is given, electric bells in every portion of the building are set ringing, policemen in the corridors shout "Division," and members troop in from smoking room, library, and restaurant, the more leisurely ones being urged along by the whips of their party in order that when the prescribed two-minute period shall have elapsed, the party will be able to muster its full strength. At the end of the interval, the speaker or chairman puts the question a second time in the same form. If, as is practically certain to be the case, the announced result is again challenged, the chair orders the members to the "division lobbies." The ayes pass into a small room at the speaker's right and the noes into a similar one at his left, and all are counted and their votes recorded as they file back to their places in the chamber. The counting is done by tellers, four in number, designated by the chair. If the government leaders construe the vote as one of "confidence," two government and two opposition whips will be named; otherwise, any members may be pressed into service. The result having been ascertained, the tellers advance to the table, bow to the chair in unison, and one of those representing the majority announces the outcome. The average time consumed is only 15 minutes, as compared with the

[1] A. L. Lowell, *op cit*, I, Chap xv, W R Anson, *Law and Custom of the Constitution* (5th ed), I, 275–280, J. Redlich, *op. cit.*, I, 133–212.

30 to 35 minutes required for a roll-call in the American House of Representatives. Many divisions are called for and taken, however, which serve no purpose except to enable members to show their constituents that they have been attending faithfully to their parliamentary duties.[1]

RECORDS

One who wishes to find out what has been said and done in Parliament on a given subject has at his disposal abundant documentary sources of information, chiefly the journals of the two houses and the "Parliamentary Debates." The journal of the House of Lords goes back to 1509; that of the House of Commons to 1547. In earlier times, both of these official records were encumbered—although often enlivened—by accounts of striking episodes and by notes on important speeches. In the seventeenth century, however, the clerks were forbidden to report the debates, and since that time the journals have consisted only of formal records of "votes and proceedings," *i.e.*, of things done rather than things said. In earlier days, too, reports and papers presented to the houses were often included. But these are now published separately, becoming part of the vast collection of parliamentary papers popularly known as "blue books."

For a long time after the House of Commons forbade its clerks to take notes on speeches, no records of debates were kept except such as were based on unofficial notes taken surreptitiously and published in defiance or evasion of parliamentary orders. A spirited contest over the matter in 1771 opened the way for freer reporting, but only in 1877 did the government begin to subsidize a famous series of "Debates" issued by the private publishing house of Hansard, and not until 1909 was the decision reached to displace this publication by one of a strictly official character, to be known as "Parliamentary Debates," and to be prepared by a staff of reporters in each house who were not connected with any newspaper or commercial publisher Every day's debates are now reported *verbatim*, and the printed record not only is placed at once in the hands of all members, but also is made available in portly volumes for libraries and private purchasers.[2]

[1] G F. M Campion, *op. cit*, 153–158 In the House of Lords, important questions are decided almost invariably by division When the question is put, the "contents," *i e*, those members who desire to register an affirmative vote, repair to the lobby at the right of the throne, the "non-contents," *i e*, those opposed to the proposal, take their places in the corresponding lobby at the left, and both groups are counted by tellers appointed by the presiding officer, two clerks also making a list of the contents and non-contents respectively as they reenter the room

[2] G F. M. Campion, *op cit.*, 62–73

PARLIAMENT BECOMES A LEGISLATURE

Having thus seen something of the general conditions under which Parliament carries on its work, we turn to examine a little more closely two of its major activities or functions, *i.e.*, law-making and finance. It will be recalled that Parliament originally had no power to make laws. That power belonged exclusively to the king, and the most that either house, as such, could do was to petition the crown for laws of specified character or on stipulated subjects. The king complied or refused as he chose; and even when he nominally complied, the new law often turned out to be something very different from that which had been asked for. This led to demand, especially by the House of Commons, for a share in the work of law-making; and gradually, as we have seen, the demand was yielded to, until at last, by the fifteenth century, the two houses became (whatever else they were besides) full-fledged legislative bodies, formulating and introducing bills, giving these bills successive "readings," referring them to committees, voting on them, and finally sending them to the king, no longer in the form of humble requests, but as completed measures to which his full and prompt assent was respectfully requested.[1] Long ago it became true that any sort of measure upon any conceivable subject might be introduced, and if a sufficient number of members of both houses were so minded, enacted into law. No measure might become law until it had been submitted to both houses; and this is still true, even though under the terms of the Parliament Act it is now easy for money bills, and not impossible for most other kinds of bills, to be made law without the assent of the House of Lords.

GENERAL ASPECTS OF THE LEGISLATIVE PROCESS

As matters now stand, a bill, in the ordinary course of things, is introduced in one house, put through three readings, sent to the other house, carried there through the same stages, deposited with the House of Lords to await the royal assent,[2] and, after having been approved, is given its place among the statutes of the realm. Bills, as a rule, may be introduced in either house—by a member who belongs to the government or by a private, *i.e.*, a non-ministerial,

[1] In theory, of course, it is still from the king that all legislation proceeds, as is illustrated by the enacting clause with which every public non-financial parliamentary statute begins "Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows . . ." For the corresponding formula used in finance measures, see J. Redlich, *op cit*, II, 254, note.

[2] Except that money bills, after having their inning in the House of Lords, return to the custody of the House of Commons

member. Certain classes of measures, however, may be introduced first in only a given house, *e.g.*, money bills in the House of Commons and judicial bills in the House of Lords. Furthermore, as we shall see, the leadership and control of the ministers have come to be such that both the number and importance of private members' bills have been reduced to minor proportions; while the chances that such bills will be passed, in case they deal with large or controversial matters, have almost completely vanished.[1] The procedure of the two chambers upon bills is broadly the same, although the more leisurely upper house has a more elastic method of doing business than the overworked popular branch.

The process of converting a public bill, whether introduced by a ministerial or by a private member, into an act of Parliament is long and intricate; usually it is spread over several weeks, or even months—occasionally, indeed, years, although in the latter case the bill will have to be introduced afresh at least a time or two in order to be kept alive.[2] The numerous stages that must be gone through have been found useful either as devices of convenience or as safeguards against hasty and ill-considered action. Some of them, to be sure, have become mere formalities, involving neither debate nor vote, and the process is decidedly more expeditious than it once was. On the whole, the work of law-making is, however, still slow, and, as will be pointed out, much thought continues to be given to modes of speeding it up, or at all events relieving the House of Commons of the excessive pressure of business under which, as every one agrees, it still labors.

BILL DRAFTING

The first step is, of course, the drawing up, or "drafting," of the bill itself. If it is a private member's measure, it is drafted by its sponsor, or by anyone whom he may employ for the purpose. If it is a government bill, it is prepared by skilled public draftsmen in the office of the Parliamentary Counsel to the Treasury—lawyers expert in the quaint and often prolix legal verbiage which custom, unmindful of the patience and

[1] See p. 261 below.

[2] By suspending the standing orders of both houses, it is, however, possible, in grave emergency, to carry a measure through all of its stages within a single day. The Defense of the Realm Act of 1914, a Gold Standard (Amending) Act of 1931, and an Emergency Powers Act of 1939 were made law in this fashion.

In connection with the initiation of legislation, it is to be observed that, in contrast with American congressional and other legislative committees, committees in the British Parliament do not themselves work out and introduce bills. By exception, however, the great Government of India Bill of 1935 (see p. 381 below) was elaborated by a joint committee of the two houses in which practically all political elements were represented. Joint committees are only very rarely set up for any purpose.

convenience of the man in the street, still requires to be employed.[1] Being, in this case, a measure on whose fate the fortunes of cabinet and of party may depend, great care will be taken with not only its form but also its content. The minister in whose province it falls, or who for some other reason has been assigned the task, first prepares a rough outline, showing the main features of the project. Then the cabinet (which very likely has already discussed the general subject) scrutinizes the plan and makes such changes as it likes—or as conference with local authorities, civil servants, or indeed with informed and interested individuals, groups, or organizations outside of government circles, shows to be desirable. Gradually the crude sketch is elaborated into a fairly exact statement of points and principles. Then the official draftsmen are called in to work up the measure in detail, using the written memoranda that have been handed them, but also conferring almost daily with the ministers. Finally—after an interval of perhaps two or three months—the bill comes back into the hands of the cabinet in full array of numbered clauses, sections, and sub-sections, ready to be carried to Parliament and started on its hazardous journey. The expert service of the Parliamentary Counsel is, of course, designed to ensure that bills will be so drawn as to mean precisely what their sponsors want them to mean, and nothing else; and the end is so well attained that English statutes—in contrast too commonly with statutes in America, notwithstanding assistance rendered by numerous bill-drafting bureaus—rank exceptionally high in orderliness and clearness. Despite all precautions, however, bills as they finally emerge from the rough and tumble of debate are, on account of amendments hastily inserted, sometimes considerably less clear than when presented at the clerk's table.[2]

HOW BILLS ARE INTRODUCED

The procedure of getting bills before the House of Commons is not as complicated as it used to be. Until 1902, it was necessary, in order to introduce a bill, to ask and obtain leave. Nowadays, all that the member needs to do is to give notice of his intention to bring in a bill, and, when called upon by the speaker, to present his bill at the clerk's table without any ceremony. The title of the bill is read aloud by the clerk—and the initial stage, *i.e.*, "first reading," is over. The bill

[1] Parliamentary counsel for this purpose was first provided in connection with the Home Office in 1869. The present connection with the Treasury dates from 1872.

[2] C. Ilbert, *Legislative Methods and Forms* (London, 1901), 77–79, and *The Government of India* (New York, 1915), Chap. i, iv–vi. The author of these books was for many years one of three officials in the Treasury known, respectively, as the first, second, and third "parliamentary counsel."

is then printed and placed on the proper calendar to await its turn to be called up. Occasionally, however, a minister, introducing an important measure, makes a brief explanation of it, one equally short speech in criticism being allowed the other side. And once in a while a minister reverts to earlier usage by asking leave to introduce, thereby gaining an opportunity to make a long speech both explaining and defending the bill's contents. Considerable debate may follow; and of course the House must vote whether to grant or withhold the desired permission.

SECOND READING

On a day fixed in advance by an order of the House, the introducer of the bill moves that it "be now read a second time"; and it is at this point that the battle between friends and foes of the measure really begins. The former explain and defend it in lengthy speeches, the latter criticize and attack it, usually ending by moving a hostile amendment. Sometimes the amendment states specific reasons why the second reading should not be proceeded with, but more frequently—employing what has come to be accepted as the most courteous method of dismissing a bill from further consideration—it runs simply, "that this bill be read a second time this day six months," or some other time at which the House is expected not to be in session. The debate on second reading is confined to the bill's aims, principles, and larger provisions. There is no point to discussing details until it appears whether the House is minded to enact any legislation of the kind at all, and any member who at this stage enters into the minutiae of the measure further than is necessary to a consideration of its principles will be admonished or stopped by the chair. The debate ended, the motion is put. If the opposition prevails, the bill perishes, and while government bills almost always come through (failure to do so, being a government defeat, would quite possibly upset the ministry), the mortality of private members' bills at this stake is very great. A bill which passes second reading is "committed," bringing it up against another and still higher hurdle.

COMMITTEE STAGE

Prior to 1907, the bill would normally have gone to committee of the whole. Nowadays it goes there if it is a money bill or a bill confirming a provisional order, or if, on grounds of its importance or controversial nature, the ministers so request and the House so directs, otherwise it goes to one of the five standing committees as directed by the speaker. In any case, the opposition will have rushed in a number of amendments designed to make the measure something different from what was intended by its authors and to force them into a position where they will

either have to accept a modified bill that they do not like or withdraw their proposal from further consideration. Committee stage is, of course, the time for discussion of the bill in all its details, and one will not be surprised to learn that such discussion—interspersed, of course, with much business of other kinds—frequently occupies weeks, and even months. After second reading, a bill may, indeed, be referred to a select committee. This does not happen often, but when it does, a step is added to the process; for, after being returned by the select committee the measure goes, as it would have in any case, to the committee of the whole or to one of the standing committees. Eventually the bill—unless in the meantime withdrawn—is reported back to the House, amended or otherwise. If reported by a standing committee, or in amended form by the committee of the whole, it is considered by the House afresh and in some detail; otherwise the "report stage" is a mere formality.

THIRD READING

Finally comes the "third reading." Although the fate of the bill has by now been pretty well settled and little can be said that has not been said before—perhaps a dozen times—the opposition is reluctant to give up, and a set debate ensues in which the principles of the bill are once more attacked and defended. No further changes, however, except of a purely verbal character, can be made; the bill as it stands (unless sent back to committee) must either be adopted or rejected. The speaker puts the motion "that this bill be now read the third time"; the division is taken; and the result is announced.

THE BILL IN THE HOUSE OF LORDS

If successful, the bill then goes to the House of Lords. Formerly, ministers or other members whose bills had passed the Commons carried them personally to the upper house, often at the head of a sort of triumphal procession of supporters. But since 1855 the method has been for the clerk of the one house to carry the measure to the bar of the other and there deliver it. What follows need not be related, because, as has been observed, procedure in the Lords is not materially different from that in the Commons except in being simpler and, as a rule, speedier—mainly because the burden of responsibility for what is done rests more lightly upon the second chamber. After being read twice, measures are commonly considered in committee of the whole, referred to the standing committee for textual revision, reported back, and thereupon adopted or rejected.

A bill which originated in the House of Commons is returned there from the House of Lords, and vice versa, whether or not it has

been agreed to. If amendments have been added, the originating house may accept them, in which case the measure becomes law upon receiving the royal assent. But it may also, of course, reject them; and if both houses stand their ground, the bill fails. Two ways of overcoming disagreement have at times been resorted to with success. One is a conference between representatives of the two houses, the other is an exchange of written messages. A conference is a meeting of members, known as "managers," appointed by their respective houses—by "ancient rule," twice as many from the Commons as from the Lords. If it is designated a "free conference," the managers on behalf of the dissentient house present the reasons for their disagreement, and each group tries to bring the other around to its way of thinking, or at all events to hit upon a mode of getting the houses into agreement. If the conference is not "free," the statement of reasons is presented, but no argument is used or comment made.

ADJUSTMENT OF DIFFERENCES BETWEEN THE TWO HOUSES

Far, however, from establishing itself as an indispensable feature of parliamentary life, as has the somewhat similar conference committee in the procedure of the American Congress, the British conference has practically become obsolete. There has not been a free conference since 1836; and as long ago as 1851 the houses, by resolution, decided to receive reasons for disagreement, or for insistence on amendments, in the form of messages, unless one house or the other should demand a conference. So far as formal action goes, the method employed nowadays to bring the houses together is, therefore, the written message, drawn up by a committee of the house which sends it, and delivered by the clerk of one house to the corresponding official of the other. A message will normally entail a reply; and the exchange may be continued indefinitely. Practically, however, any adjustments that are reached are likely to flow, not from this rather stilted procedure, but from informal discussion among the party leaders. The cabinet, indeed, composed as it is of members drawn from both houses, may be regarded as, potentially, a sort of "free" conference, always available as an aid in ironing out differences. Since 1911, it has been possible, of course, for legislation to be enacted without agreement between the two houses at all —financial legislation by a very easy, and other legislation by a longer and more difficult, process Experience indicates, however, that law-making in this fashion will be rare, and that normally the two houses must be brought into agreement on a bill, else the proposal fails Recognizing this, and convinced that existing methods of over-

coming differences are inadequate, the Conference on the Reform of the Second Chamber, presided over by Lord Bryce, recommended in its report of 1918 that the old method of the free conference be revived.

THE ROYAL ASSENT

The houses having finally passed a bill in identical form, all that remains is the royal assent—indirectly and perfunctorily given, to be sure, but yet indispensable. The sovereign may, if he likes, convey it in person. But the thing is now actually done differently, in a manner which Sir Courtenay Ilbert describes vividly as follows: "The assent is given periodically to batches of bills, as they are passed, the largest batch being usually at the end of the session. The ceremonial observed dates from Plantagenet times, and takes place in the House of Lords. The king is represented by lords commissioners, who sit in front of the throne, on a row of arm-chairs, arrayed in scarlet robes and little cocked hats. . . . At the bar of the House stands the speaker of the House of Commons, who has been summoned from that House. Behind him stand such members of the House of Commons as have followed him through the lobbies. A clerk of the House of Lords reads out, in a sonorous voice, the commission which authorizes the assent to be given. The clerk of the crown at one side of the table reads out the title of each bill. The clerk of the parliaments on the other side, making profound obeisances, pronounces the Norman-French formula by which the king's assent is signified: 'Little Peddlington Electricity Supply Act. Le Roy le veult.' Between the two voices six centuries lie." [1]

Formerly, acts of Parliament were proclaimed by the sheriffs in the counties, but nowadays they are not officially announced to the public in any way whatsoever. Two copies of each measure are printed on special vellum, one to be preserved in the Rolls of Parliament, kept in the Victoria Tower, the other to be deposited in the Public Record Office. The dutiful subject is presumed to know the law, and ignorance of it cannot be pleaded as an excuse for violation. But he is left to find out what it is as best he can.[2]

[1] *Parliament*, 75–76.

[2] The procedure of the House of Commons on public bills of a non-financial nature is described briefly in G. F. M Campion, *op. cit.*, Chap. vi; A. L. Lowell, *op cit.*, I, Chaps. xiii, xvii, xix, W. R. Anson, *op. cit.* (5th ed), I, 267–280, J. Redlich, *op. cit*, III, 85–112; and T. E. May, *op. cit.* (13th ed), Chap. xv. May's work, periodically brought up to date in successive editions, is the standard guide to the whole subject of British parliamentary procedure, but is lacking in the richly historical treatment to be found in Redlich C. Ilbert, *Legislative Methods and Forms* and *The Mechanics of Law-Making* cover the subject fully and expertly. A. V. Dicey, *Lectures on the Relation between Law and Public Opinion in England dur-*

PRIVATE BILLS

Reserving procedure on money bills to be dealt with in the next chapter, something may be said, in closing the present survey about the handling of private bills and provisional orders. As defined in the House of Commons "Manual," a private bill is one whose object is "to alter the law relating to some particular locality, or to confer rights on or relieve from liability some particular person or body of persons." The object may be to grant a pension or privilege to an individual, but far more frequently it is to empower a municipality or private corporation to build or extend a railroad, construct a tramway, erect a gas plant, lay out a cemetery, dig a canal, or engage in some other enterprise which by its nature involves limitation upon or interference with public or private (usually property) rights. In the United States, these matters —relating mainly, it will be observed, to franchises—are almost entirely in the control of the state legislatures or of subsidiary bodies like city councils. But in Britain, where there is nothing corresponding to our states, the national government has sole jurisdiction.

HOW CONSIDERED

Every private bill must go through the same stages in the two houses as a public bill. Whereas, however, a public bill can be introduced in either house without any preliminary proceedings beyond the mere planning of the bill itself, a private bill can be presented only in pursuance of (1) a petition filed with an official of each house known as "examiner of petitions for private bills," and with the government department having most to do with matters of the kind involved, and (2) notification of all owners or occupiers of land required, and of any and all other persons whose interests are likely to be directly affected. Furthermore, there is in each house a special type of committee for the handling of bills of this nature—at any rate, all that encounter opposition.[1] A private-bill committee in the Commons consists of four members, and in the Lords five, and as many such committees are set up during a session as the volume of business requires. As a rule, each committee receives a considerable batch of bills, and inasmuch as the inquiry on each proposal takes on the character of a quasi-judicial

ing the Nineteenth Century (London, 1905), is an illuminating historical and philosophical survey.

It is significant that a recent leader of the Labor party (which has had little to do with developing the rules and usages of Parliament) is, on the whole, satisfied with present procedure "It," he says, "has achieved a very difficult thing—that of giving the Government of the day the power to get through its business, while preserving to the Opposition a full opportunity of discussing legislation and criticizing administration." C R Attlee, *The Labor Party in Perspective*, 170

[1] Those that do not are referred, as a matter of form, to a committee on unopposed bills

proceeding, with counsel and witnesses to be heard, service on the committees (compulsory under the rules) is a heavy drain on a member's time and energy, without compensating opportunity for personal distinction. Bills reported favorably are practically certain to be passed without discussion by the house receiving the report, and thereupon sent to the other branch.

ADVANTAGES AND DISADVANTAGES

The British method of handling private bills has two great merits. In the first place, even though it burdens members with much exacting committee work, it greatly economizes the time of the houses themselves. In American legislatures, as also in the French and other Continental parliaments, all such bills are dealt with under precisely the same procedure as public bills. Any member may introduce as many of them as he likes, and they simply take their chances along with bills of other sorts, often interfering with proper consideration of major public measures, yet with no guarantee that they will themselves receive the attention due them or that those of them that reach passage will be the most worthy. A second point is that private-bill legislation, under the British system, is kept entirely outside the realm of party politics. Ministers bear no responsibility for it, and rarely take any part in it, except as they may pass administratively upon proposals brought to the attention of their departments. In Parliament, Conservatives and Laborites are not sent into the division lobbies on the question of whether the London and Northwestern Railway shall be permitted to build some new trackage or the borough of Bury St. Edmunds shall be empowered to operate a gas plant. The whole procedure is based on the sensible idea that the thing to do is to secure careful, dispassionate, non-partisan examination of every project and to let the decision be reached, in effect, by those who have heard the evidence and consulted with the experts. The one objection heard is that the method is expensive for both promoters and opponents of bills; and it is true that in order to get a private bill through—or to defeat one—it is often necessary to hire highly paid counsel, to take care of the travelling expenses of numerous witnesses, and to incur other costs, including a fee which is exacted whenever a private bill is introduced. It may usually be assumed, however, that the privilege sought it worth being paid for; otherwise it would not be sought. At all events, the advantages in other respects undoubtedly overbalance the defect mentioned, if it be one.[1]

[1] The standard treatise on the subject, though old, is F. Clifford, *A History of Private Bill Legislation*, 2 vols (London, 1885–87). Briefer discussion will be found

CONFIRMATION OF PROVISIONAL ORDERS

When, however, a municipality wants to extend a tramway system or erect a hospital, it does not necessarily turn *directly* to Parliament for authorization. In many general statutes dealing with public health, transportation, poor relief, education, finance, and similar subjects, Parliament has conferred upon the appropriate government department at London, or in some instances upon a suitable local authority, power to issue "orders" automatically extending specified amounts and kinds of authority to both municipalities and private corporations. Not only that, but such departments and local authorities may anticipate future action of Parliament by issuing "provisional orders," *i.e.*, orders whose ultimate validity is contingent upon subsequent parliamentary confirmation. More and more use is, indeed, being made of such orders. The petitioning individual or body gains by not being held up while awaiting parliamentary action, and Parliament gains, in time and labor, by placing the burden of investigation and tentative decision upon the government department. Provisional orders that have been issued by the departments are grouped each year into a series of "provisional orders confirmation bills," which commonly go through with no opposition, and therefore no debate, just as in the case of unopposed private bills. Should opposition develop, a bill to confirm must go to a special committee, and the houses may end by refusing assent to a grant which a department has provisionally made. Refusal, and even opposition, is, however, rare, and the increasing use of orders has, by appreciably lessening the number of private bills to be considered, contributed by so much to a solution of the urgent problem of saving the time, especially of the members of the House of Commons, for consideration of bills of public, nation-wide interest.[1]

in G. F M Campion, *op cit*, Chap IX, A L. Lowell, *op cit*, I, Chap XX, C. Ilbert, *The Mechanics of Law-Making*, 132–149, and T E May, *op cit* (13th ed), Chaps XXVI–XXIX

[1] T E May, *op cit* (13th ed), Chap XXXI The adoption of something like the British system of provisional orders is advocated in R Luce, *Congress—An Explanation*, 145–147, as a means of relieving Congress (which is flooded with "special"—largely pension—bills) and other legislatures of a portion of their present burden of business.

CHAPTER XIII

Parliament at Work: Finance

THE principal means by which Parliament mounted to its modern position of supremacy was the power of the purse; and to this hard-won possession it still resolutely clings. To be sure, the initiation of financial policy, the preparation of financial measures, and the administration or supervision of financial activities, national and local, fall to the crown, acting through the cabinet and, in particular, the Treasury. To be sure, too, one branch of Parliament, *i.e.*, the House of Lords, has lost all genuine power in financial legislation, for purposes of which "Parliament" has come to mean only "House of Commons." [1] After the ministers, however, have prepared financial plans for a year, they are at the end of their tether—so far as those plans are concerned—until Parliament acts. Independently, they cannot tax, borrow, or spend.

PARLIAMENTARY CONTROL OVER FINANCE

Four main things it therefore falls to Parliament to do: (1) to determine—invariably on lines recommended by the ministers—the sources from which, and the conditions under which, the national revenues shall be raised; (2) to grant the money estimated by the ministers to be necessary to carry on the government, and to appropriate these grants to particular ends; (3) to inquire into and criticize the ways in which the funds are actually spent; and (4) to see that the accounts of the spending authorities are examined and properly audited. No taxes may be laid without express parliamentary sanction, and no public money may be spent without similar authority, conferred either in annual or other formal appropriation acts or in permanent statutes. Furthermore, ministers are continuously subject to questioning on the floor of Parliament concerning the use of public money under their direction, and the accounts of the spending departments and officers are audited minutely—not only by the Comptroller and Auditor-

FOUR MAIN PHASES

[1] It is to be recalled, however, that no money bill can become law until the House of Lords has been allowed a month's time in which to act upon it, and that any such bill, even if consented to by only the House of Commons, becomes an "act of Parliament" just as truly as if passed in both branches.

General, who to all intents and purposes is a servant of Parliament, but also by a full-powered, non-partisan parliamentary committee (the committee on public accounts), under a chairman drawn from the opposition.

Such are the basic conditions under which the power of the purse is now wielded at Westminster, and our concern in the present chapter is to see how Parliament goes about voting taxes and expenditures, *i.e.*, the methods of financial, as distinguished from other, legislation. To do this, it will be best to trace the order of procedure (including the preliminary work of the Treasury) first for appropriation bills and afterwards for bills designed to raise revenue

ESTIMATES OF EXPENDITURE

We take expenditures first because that is what the government itself does; certainly it is not illogical to find out what is going to be spent before trying to decide how much money to raise and how to go about raising it.[1] The first step, then, in making financial arrangements for a given fiscal year is to prepare the estimates of expenditure. Parliament, however, as we have seen, does not have to make fresh provision for all expenditures every twelve months. Outlays for support of the royal establishment, the salaries and pensions of judges, interest on the national debt, the public expense of conducting parliamentary elections, and other Consolidated Fund services or charges, while initially authorized and at all times alterable by Parliament, go on from year to year until changed by new enactment,[2] and this takes care of considerably more than one-third of the annual national disbursement. The estimates of which we are here speaking are, rather, for the "supply services"—the army, navy, air force, and civil service—provision for which is made for but a single year at a time. They apply to outlays which, in amount if not in general purpose, are matters of discretion, or policy, and hence are, and should be, subject to frequent readjustment. Every request for an appropriation, it should be noted, is required to be submitted to Parliament in the form of an "estimate," *i.e.*, a written statement showing precisely how much money is expected to be needed for a designated purpose, together with a request that the stipulated sum be granted for the purpose specified.

[1] This, of course, is not the method in *private* finance, a prudent individual or corporation must usually plan expenditures only after finding how much there will be to be spent. Having dependable means of raising whatever amounts will be needed (within bounds), governments can safely plan outlays first. Even they, however, may be obliged to revise expenditure estimates downward when it appears that sufficient funds cannot be raised expediently.

[2] See p. 99 above.

HOW PREPARED

How are the estimates got ready for Parliament's attention? First of all, matters of general policy that might entail large changes of expenditure, *e.g.*, a housing program, an increase of the army, a naval base at Singapore, are threshed out in conferences between the officers of the Treasury and representatives of the departments concerned, and also, in the case of matters as important as those mentioned, in cabinet discussions. The departments thus get a reasonably definite idea of how far the Treasury is willing to go in support of their projects, and of what outlays can be planned without risk of cabinet disapproval. On October 1 preceding the fiscal year for which the estimates are to be prepared (beginning the following April 1), the Treasury sends a circular letter to all officials responsible for estimates requesting them to make up and submit estimates of the expenses of their departments, offices, or services during the coming year.[1] All are asked to plan as economically as possible, and, in particular, not to adopt the easy method of simply taking the estimates of the past year as the starting point for those of the next. The responsible officers of the departments thereupon set their staffs to compiling and entering figures, using forms sent out from the Treasury on which comparative data have already been entered. At all stages of the work, close contact is maintained with the Chancellor of the Exchequer and other Treasury officials; the rules, indeed, require that, in so far as possible, additions, omissions, or other alterations of the existing arrangements shall be referred to the Treasury before the departmental proposals as a whole are formally presented. If the Treasury demurs, the department may carry a proposal to the cabinet. But such appeals are rarely made unless the question is one of exceptional importance; and there is a strong presumption that the cabinet—which, as a matter of fact, never itself considers the estimates for a given year in their totality—will back up the Treasury in any position that it takes. The result is, as one writer puts it, that the estimates, when finally submitted by the departments, "represent little more than the statement of proposals that have already been agreed upon between the various submitting departments and the Treasury."[2] The sum total of these estimates as finally approved by the Treasury, added to the amounts required for Consolidated Fund services, gives the expenditure which will have to be met out of the revenue for the year if no deficit is to be

TREASURY CONTROL

[1] For a specimen letter, see N. L. Hill and H. W. Stoke, *op. cit*, 162–165.

[2] W. F. Willoughby *et al*, *Financial Administration of Great Britain* (New York, 1917), 61. It must not be inferred, however, that the Treasury's rôle is an easy one

incurred—and if no unanticipated demands arise. Ordinarily, all estimates of expenditure, in complete form, are in the Treasury's hands by January 15; whereupon the estimates clerk, making sure that there is nothing in them which the Treasury has not approved, has them printed in five huge quarto volumes.

No request or proposal looking to a charge upon the public revenue will be received or given attention in Parliament unless the outlay is asked for or supported by the crown, which in effect means the Treasury. First adopted by the House of Commons in 1706, and made a standing order in 1713,[1] this rule totally prevents private members from introducing appropriation bills or resolutions, *i.e.*, from moving that a specific sum be granted for a specific purpose—although it is not construed to prohibit non-ministerial resolutions favoring or opposing some specified kind of expenditure in principle; and it prevents most of the evils long associated in the United States with the congressional "pork-barrel."[2] The House of Commons can determine the amount of money that will be granted and the sources from which the money shall be drawn. But it has denied itself the privilege of deciding whether any money shall be granted at all, unless the proposal for a grant is endorsed by the crown.

CONSIDERATION BY THE HOUSE OF COMMONS

Parliament opens a new session at the end of January or the beginning of February, and as a rule the estimates of expenditure are presented to the House of Commons during the first two weeks thereafter—the estimates for the civil service by the Financial Secretary to the Treasury, those for the army, the navy, and the air force by the Secretary of State for War, the First Lord of the Admiralty, and the Minister for Air, respectively. On an early day, agreed upon at the beginning of the session, the House resolves itself into committee of supply, which, as has been explained, is a committee of the whole, sitting under the presidency of the chairman of committees or his deputy; and after this committee has indulged in a brief

[1] Standing Order 66. The rule reads as follows "This House will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the Consolidated Fund or out of money to be provided by Parliament, unless recommended from the crown" In practice, the rule is applied also to proposals for taxation.

[2] There is, of course, nothing to prevent a private member from bringing such pressure to bear as he can upon a minister or department to propose, and upon the Treasury to endorse, some item of expenditure from which his constituents will benefit, and a good deal of this sort of thing is done. Once the estimates have gone to the House of Commons, however, the opportunity ceases This is one of the reasons why lobbying, on the lines familiar in America, is hardly known at Westminster

preliminary debate on "grievances"—a debate which once was important, but now is meaningless, since Parliament holds the remedy for grievances in its own hands—the estimates are taken up for such scrutiny as time permits, and with a view to the adoption of resolutions which can be reported back to the House as bases for appropriation bills. Only 20 days are allowed for the purpose, scattered throughout the session,[1] and under the present rules this business is made the first order of the day on Thursdays of successive weeks.

"VOTES ON ACCOUNT"

The estimates are considered in separate groups termed "votes"—some 150 in all—corresponding as closely as possible to distinct services, and divided into subheads and items to facilitate rapid scrutiny and definite discussion.[2] Each "vote" becomes the basis of a "resolution of supply," which is adopted in committee and duly reported to the House. There is not time to consider all of the votes before April 1; and yet the government must have authority by that date to spend something under practically every vote.[3] Accordingly, the first thing done is to pass resolutions, *i.e.*, "votes on account," giving the government provisional authority to spend a limited sum under every vote, without committing Parliament ultimately to grant the total amount asked for. In this way, the government finds itself on April 1 armed with provisional authority to spend on the supply services sums sufficient to last until about the following August, when the session will end. Legally, the authority is strictly provisional; no appropriations, in the proper sense of the word, have yet been made, and the resolutions that have been passed will have no validity beyond the end of the session.

Furthermore, this authority to spend does not of itself carry authority actually to draw the money from the Consolidated Fund. This particular authority comes by virtue of resolutions passed in another committee of the whole, known as the committee of ways and means, whose function is two-fold: (1) to authorize issues from the Consolidated Fund, and (2) to consider proposals for raising money, whether by taxes or by loans. At an early stage of the session, the House begins to sit from time to time also as committee of ways and means; and by April 1, when the government must begin to draw upon the Exchequer for the expenses of the new fiscal year.

[1] Three "allotted" days, however, may be added by vote of the House, with consent of the government.

[2] On the character and form of the estimates, see W. F. Willoughby *et al*, as cited, Chap. IV.

[3] Unused portions of grants lapse on March 31 and are applied to reduction of the national debt.

this committee has reported to the House resolutions "granting ways and means" (including provisions for necessary temporary borrowing) which have been incorporated in a bill and passed as a Consolidated Fund (No. 1) Act. The "ways and means" thus granted always equal the total of the votes of supply thus far provisionally adopted, plus any supplementary votes that may have become necessary for the expiring year and any excess votes for the previous year.

THE APPROPRIATIONS COMPLETED

Accordingly, the government enters upon the fiscal year with (1) expenditures authorized in amounts adequate—barring the unexpected—to carry the services up to August, and (2) access to funds sufficient to last to approximately the same date. It remains to fill out the fiscal schedule, so to speak, and make it definitive for the entire year. And to this task the committee of supply, the committee of ways and means, and finally the House as such, devote themselves from time to time throughout the remainder of the session. In the case of estimates of expenditure, it is simply a matter of pursuing consideration of them so much farther as may be necessary in order to fix the final and exact amounts to be allowed. One or two more Consolidated Fund acts are likely to be passed, between April and August, giving the government further access to funds; and at the very end of the session, after ways and means for the year have been definitely determined, all such measures enacted up to that time are gathered into a general Consolidated Fund (Appropriation) Act, commonly known simply as the Appropriation Act, which (1) prescribes the appropriation of all sums carried by the votes in supply, and (2) authorizes the issue of a sum from the Exchequer equal to the total of these votes and gives the Treasury temporary borrowing powers up to the whole of the amount. Standing Order 15 requires that consideration of the estimates of supply be completed not later than August 5.

At no time while these estimates are under consideration can a private member move an increase in a vote, for to do so would violate the rule which requires all proposals for expenditure to come from the crown. He may, however, make such a proposal indirectly by moving to suggest *to the government* the substitution of a larger figure; and he may directly move a reduction. The committee of supply can vote a grant asked of it in full, reduce it, or refuse it altogether. It cannot increase it, annex a condition, or alter its destination; although it may be able to induce the government to substitute a revised estimate. As a rule, most of the committee's limited

time is consumed on a few "votes," not necessarily the most important; many, indeed, are passed with only the most perfunctory scrutiny, and with no discussion whatever.

ESTIMATES OF REVENUE

All this, however, tells only a part of the story of how arrangements for a coming fiscal year are made. It is true that the first thing undertaken is to compile estimates of expenditure. But this work will not have been going on long before attention will be directed also to the matter of probable revenue; and even before the estimates of outlay reach the Treasury in their matured form, they are not unlikely to have been trimmed down because the word has been passed around that the funds in sight will not admit of such charges as were originally contemplated. For the estimates of revenue, the Treasury is responsible, even more directly and completely than for estimates of expenditure; indeed, from first to last they are the handiwork of the Treasury itself. While the multifold and scattered spending offices are at work on their figures for the coming year, the revenue departments in the Treasury—chiefly customs and excise, inland revenue, and post office—are making the best guesses that they can as to the amount that each source, *e.g.*, land taxes, the income tax, stamp duties, "death duties" (inheritance taxes), the postal service, rents, dividends from investments, and what not, will yield, and the Chancellor of the Exchequer and his assistants are balancing off prospective outgo against prospective income and working out plans by which, if given parliamentary approval, ends can probably be made to meet. If, by happy chance, the revenues promise to exceed what will be required, the Chancellor (in consultation with the cabinet) may decide to recommend a lowering of the income tax, or even the abolition of certain taxes altogether. But if, as is much more likely to be the case, the outgo promises to mount higher than the income, even after all feasible economies have been determined upon, it becomes necessary to decide what existing taxes shall be pushed upward, and how far, and what new imposts, if any, shall be laid. In reaching these decisions, the ministers may be actuated, of course, not alone by a desire to raise more money, but also by a purpose to shift the tax burden in this direction or that, in the interest of social or economic changes which they have at heart. Indeed, the whole policy of a cabinet may be wrapped up in the tax proposals that it carries to the House of Commons.[1]

[1] One recalls in this connection the tax proposals embodied in the historic Lloyd George budget of 1909. Other illustrations include the repeal of the corn laws, the revival of income taxes, and the general adoption of free trade, during the period 1841–60.

THE BUDGET

Early in the session at which the estimates are to be considered comes one of the big occasions in the parliamentary history of the year, *i.e.*, "budget night" The House of Commons resolves itself into committee of the whole on ways and means; and, with a huge pile of carefully arranged type-written documents before him—the benches being crowded with members and the galleries with spectators—the Chancellor of the Exchequer unfolds the government's proposals. He reviews the finances of the past year, tells what outlays are to be provided for and what revenue is to be expected, touches on the condition of the national debt, and then, to an audience growing in eagerness (it already knew, at least in a general way, about these things, but it has hardly an inkling of what is now to come), he discloses the increases or decreases of old taxes and the nature and extent of the new taxes provided for in the government's fiscal program. Small wonder that the "budget speech" is always interesting, sometimes surprising, and occasionally startling. Rarely in times past did the speech consume less than three hours, sometimes it ran to twice that length. "Spoke 5–9 without great exhaustion," recorded Gladstone in his diary following his budget speech of 1860, "aided by a large stock of egg and wine. Thank God! Home at 11. This was the most arduous operation I have ever had in Parliament." Inasmuch as the Great Commoner was called upon to introduce, or "open," at one time or another, 13 different annual budgets, it was well for him, as for his hearers, that he had the knack, as some one once remarked, of "setting figures to music."

REVENUE PROPOSALS BEFORE THE HOUSE OF COMMONS

Nowadays, the budget speech is likely to be shorter, because it has come to be only a general announcement, or explanation, preliminary to placing the budget itself, in printed form, in the hands of the members. Filling, as a rule, only a few printed pages, the document known technically as the budget does not look very formidable.[1] It is buttressed, however, by masses of statistical and other matter that challenge the industry of any person who would really comprehend it. The essence of a budgetary system is, of

[1] Historically and accurately, the term denotes only the Chancellor's exposition of the state of the finances and the measures rendered necessary thereby—in other words, the Chancellor's speech In everyday parlance, however, it is often applied to the whole annual plan of finance. The word is derived from *bougette*, an old English term for a small bag or pouch, and seems to have come into use in its present sense in the early eighteenth century. A pamphlet of 1733 entitled *The Budget Opened* satirically pictures Robert Walpole, when explaining his financial program, as a quack doctor opening a bag filled with medicines and charms "Opening the budget" is still a common phrase

course, the careful consideration, at one and the same time (or at least in their relations to each other), and by the same body of men, of both sides of the national account, first by those whose business it is to initiate fiscal proposals, and afterwards by the legislature that votes them; and in the House of Commons the proposals relevant to revenue (including loans) are dealt with, not only by the same general procedure as those for expenditures, but throughout the same general period of time. The proposals are debated serially in committee of the whole (*i.e.*, committee of ways and means) and, after adoption—as originally proposed, or as amended—in the form of resolutions, are reported to the House and passed as bills. Private members may not move new taxation, although they may move to reduce taxes which the government has not planned to alter, or to repeal them altogether. A further interesting feature of the system is that, formerly by mere custom but since 1913 by law, increased or otherwise altered income, customs, and excise taxes proposed in the budget speech, and tentatively approved in ways and means resolutions passed immediately, become operative on the morning following the delivery of the speech. If the proposals are not definitely adopted within a period of four months, the money collected has to be returned to those who paid it. Only very rarely, however, does this situation arise. The practice is a striking illustration of the strong presumption that whatever proposals (at least in the domain of finance) the government carries to the floor of the Commons will ultimately be enacted.

APPROPRIATION ACT AND FINANCE ACT

The results of the entire fiscal operation as described finally emerge in two great statutes, *i.e.*, the Appropriation Act, already mentioned, and the Finance Act. The first of these, as we have seen, gives final authority for payment out of the Consolidated Fund of all grants that have been made; and it is passed by the House on the basis of resolutions reported back to it partly from the committee of supply, and partly also from the committee of ways and means. The Finance Act, based upon resolutions reported from the committee of ways and means, reimposes the income tax (with surtaxes) at the rates newly agreed upon, stipulates the new rates of indirect taxes if any changes have been made, remits taxation if it has been so decided, and provides such new or additional revenues as the necessities of the situation require. As in the case of appropriations, taxes are not freshly authorized in full every year. Indeed, whereas most expenditures are thus authorized, most taxes (something like 60 per cent, in terms of yield) are not, being based on permanent

statutes which are always subject to repeal or alteration but do not need to be renewed annually. Thus, death duties, stamp duties, most customs duties, and various excises are imposed by continuing statutes. For many years, the imposts that were regularly reserved for annual readjustment, with a view to balancing the budget, were the tea duty and the income tax—the one an indirect levy resting on the mass of the people and the other a direct tax regarded as levied upon property. In the early part of the present century, however, it became the usual thing to deal with the customs duties on tobacco, beer, and spirits in the same fashion.

MONEY BILLS SENT TO THE HOUSE OF LORDS

All finance proposals make their first appearance in the House of Commons. Those that are approved by that body, however, must invariably be submitted also to the House of Lords, which in former times must pass them, equally with the popular chamber, if they were to become law. Since 1911, the concurrence of the Lords has not been necessary. Any bill affirmed by the speaker of the House of Commons to be a money bill, if sent to the Lords at least one month before the close of the session, is submitted for and duly receives the royal assent, and thereby becomes law, whether or not consented to—or even considered—by the upper chamber.

AMERICAN FINANCIAL LEGISLATION COMPARED

The British system of handling financial legislation has long been held up as a model throughout the world, and has been widely imitated. It undoubtedly has many excellent features. Above all, it guarantees a financial program which has been prepared as a unit and for which full responsibility rests upon a single authority, the cabinet. Notwithstanding large advance in budgetary matters in recent years, the financial activities of the government of the United States still lack an equal degree of coherence and definiteness of responsibility. Under the Budget and Accounting Act of 1921, to be sure, the director of the budget at Washington receives all estimates of expenditure from the several departments, boards, and commissions and works them into a coordinated fiscal plan, to be presented to Congress on the sole responsibility of the president. But after the two branches have come into possession of the plan, each in its turn may introduce any changes that it desires, increasing appropriations here, reducing them there, and even inserting items altogether new; so that by the time when the appropriation bills finally emerge as enacted measures, they may be far from what the executive intended, and responsibility for them quite impossible to fix. To make matters worse, proposals for raising revenue—which may originate with the executive, but may also be introduced by

any member of the House of Representatives on his own initiative—are still considered, in both branches, by committees entirely distinct from those that have to do with appropriations, often resulting in a working at cross-purposes which is totally foreign to the British House of Commons, where revenue and appropriation proposals are considered by committees (of the whole) which are indeed distinct in name but absolutely identical in personnel. Still further, whereas in Britain the ministers whose financial program is being submitted to Parliament may follow it there and, as members, explain and defend it on the floor, in the United States the executive, after having once transmitted the annual budget, has no opportunity to give it support except by messages, conferences, appearances of the Secretary of the Treasury before committees, and other more or less indirect methods. There is considerable demand in America for a budgetary procedure that will come a good deal closer to the British—one that will enable the executive to have spokesmen present in the financial sittings of the houses, and that will prevent Congress from appropriating money not asked for by the executive, or, at all events, will give the president power to veto separate items inserted in appropriation bills contrary to executive judgment.[1]

SHORTCOMINGS OF THE BRITISH BUDGETARY SYSTEM:

It would be a mistake, however, to infer that the British system is faultless, or that every Britisher is satisfied with it. On the contrary, much criticism is heard, along with discussion of possible improvements. The system may be said to have the defects of its merits. If is coherent, integrated, and expeditious; but it is so because Parliament, while maintaining satisfactory arrangements for auditing, and still giving reasonably adequate attention to questions of taxation, has largely abdicated, in favor of the cabinet,[2] that control over expenditure and over larger matters of financial planning which the legislature, under popular forms of government, is supposed to exercise. Analyzed somewhat more closely, the situation presents four main difficulties. The first is the restricted and inadequate

1. INCOMPLETENESS OF FINANCIAL INFORMATION GIVEN TO PARLIAMENT

nature of the financial information given to Parliament, voluminous though it is. The budget figures faithfully present a "cash account": what has come in; what is expected to come in during the succeeding year; what has been, and what is intended to be, paid out. They do not reveal the relations of these

[1] F. A. Ogg and P. O. Ray, *op cit.* (6th ed.), Chaps. xxiii–xxiv, W. F. Willoughby, *The National Budget System* (Baltimore, 1927), A. E. Buck, *The Budget in Governments of Today* (New York, 1934).

[2] One might almost say, rather, the Treasury.

data to the fiscal operations of other years, in respect to such matters as arrearages and the payment of taxes in advance. Nor do they distinguish items of dead expense, *e.g.*, for war, from others that are in the nature of investments, *e.g.*, the purchase of land or of equipment for the state-owned telegraph and telephone systems. In short, they fail to put the general run of members in a position to take a long view of the country's financial condition, and thus to comprehend the government's fiscal plans in all of their ramifications and bearings.

2. LACK OF TIME

A second difficulty is the altogether inadequate amount of time available in the House of Commons for consideration of budgetary matters, especially on the side of expenditures. As we have seen, the time allotted to appropriation proposals is only 20 days (which can never be extended by more than three days), scattered over a period of some six months. For a national outlay reaching the studendous peace-time total of £1,000,000,000 to £1,100,000,000 a year, this is insufficient. Many "votes," carrying millions of pounds, pass entirely undebated. Furthermore, the House of Commons, sitting as committee of the whole, is too large a body to consider the estimates satisfactorily. Its deliberations must perforce take the form of slow and rather general debate; it cannot focus attention for days on some particular proposal that has been challenged, call in witnesses and experts, and conduct a searching study of the matter such as would be possible for a more compact and leisurely committee.

3 UNWIELDINESS OF COMMITTEE OF THE WHOLE

4. POLITICAL IMPLICATIONS OF BUDGET DISCUSSIONS

Most important of all, perhaps, is the fact that there is next to no discussion upon the merits of financial proposals as such. These proposals have come from the government, and the government's supporters feel obligated to accept and uphold them as necessary and proper; otherwise they will seem to be inviting embarrassment, and perhaps disaster, for the ministry and the party. On the other hand, the proposals are viewed by the opposition as furnishing just so many opportunities for ventilating grievances and bringing the political policy of the government under critical review. If, therefore, a vote is challenged or a reduction moved, the question tends to become one of "confidence," and the debate proceeds accordingly. What should be free discussion simply upon the desirability of holding to or altering the government's estimated figure resolves itself into partisan debate upon government policy generally. Few economies, therefore, are introduced from the parliamen-

tary side. Members of the party in power will not embarrass the government by urging them, and, with rare exceptions, will feel duty bound to vote them down when advocated by the opposition. The latter will let most of the majority proposals go through without challenge, concentrating its fire on a few here and there which offer the most promising chances for publicly putting the ministers on the defensive. Of dispassionate, straightforward, constructive financial criticism, there is very little.

POWER OF THE PURSE PASSES TO THE CABINET

The result is that, save on rare occasions, parliamentary control is largely a matter of form. The House of Lords no longer has power even to hold up, much less to prevent, the adoption of money bills, the House of Commons, shorn by self-denying ordinances of the right either itself to originate proposals for expenditure or to increase the proposals submitted to it by the crown, normally assumes that the government knows best what is needed and accepts whatever proposals are offered; and while the popular branch has the right to reduce the amounts called for, or even to refuse to make any grant at all, the conditions that have been described leave it poorly equipped to exercise this power with much intelligence and impartiality. Responsibility for preventing extravagance, therefore, falls almost entirely upon the executive, rather than the legislature—primarily, of course, upon the officials of the Treasury. Fortunately, the means provided for such protection are effective, and little extravagance results. The fact cannot be got around, however, that, to all intents and purposes, the power of the purse is no longer in Parliament, but rather in the cabinet.

PROPOSALS FOR MORE EFFECTIVE PARLIAMENTARY CONTROL

Realization of this situation has long made members of the House of Commons uncomfortable, and upwards of half a century ago select committees began to be set up to study the problem. With the World War running the nation's expenditures to unprecedented heights and parliamentary control becoming even more of a fiction than before, one more committee in the series was put to work in 1917. Reporting a year later, this committee recommended (1) more rigorous financial supervision over the departments by the Treasury, (2) appointment at the beginning of each parliamentary session of two committees charged with examining the estimates with a view to suggesting economies, and (3) acceptance all around of the principle that a motion carried in committee of supply in pursuance of the recommendations of the estimates committees should not be taken to imply that the government of the day no

longer enjoyed the confidence of the House.[1] The committee's proposals have borne less fruit than was hoped. In 1920, however, one select committee on estimates was set up, with authority to examine any estimates submitted to the House and "report economies consistent with the policy implied in those estimates"; and a committee of this nature has been employed fairly regularly ever since. All estimates, it should be observed, continue to be passed upon by the House in committee of the whole. The select committee merely supplements the hurried work of that agency by looking into the estimates for two or three departments every year and raising questions about possible savings, the regrouping of items, and similar matters. Even so, it has justified its existence.

OBSTACLES

The suggested agreement under which amendments offered by members, when the House is sitting in supply, should be regarded, not as expressions of want of confidence in the ministry, but merely as business proposals to be considered in a business-like rather than a partisan spirit, has much to commend it. Ministers, however, have no enthusiasm for it (just as they have no enthusiasm for any plan under which the estimates would be sent off to special or standing committees, as they are in France, the United States, and elsewhere), for, obviously, if the principle were once admitted, the cabinet's present dominant position in financial matters would come to an end, or at all events be seriously impaired. The greatest single factor in the paramountcy of the cabinet in public affairs today is the almost positive assurance which it has that its financial program, year in and year out, will ride through at Westminster substantially unaffected by criticism and amendments. Ministers are not always unwilling to accept alterations suggested, by friend or foe, in committee of the whole; indeed, they habitually frame their proposals in accordance with what they understand to be the parliamentary and national temper. As a rule, they will not press an issue to the point of stirring up serious antagonism. But they would not relish a state of things under which their finance bills would be in danger of emerging from Parliament emasculated and unrecognizable, or such that their fellow-partisans at Westminster would feel equally free with the opposition to offer and urge plans different from those which the Treasury had stamped with its approval. Hence, the problem remains. Cabinet government is rightly supposed to be one of the crowning glories of the

[1] *Parliament and the Taxpayer* (London, 1918), by E. H. Davenport, who participated in the work of the select committee, is a vigorous discussion of the matters dealt with in the report.

British constitution. Englishmen cannot, however, help wondering occasionally whether, in the domain of finance, it has not to some extent overreached itself.[1]

[1] Up-to-date accounts of procedure on money bills include G. F. M. Campion, *op. cit.*, Chap viii, J. W Hills and E. A. Fellowes, *British Government Finance*, Chaps. ii–iii, and W. I. Jennings, *Cabinet Government*, Chap. vii Cf. article "Budget" by W. F. Willoughby in *Encyc. of the Soc Sci.*, III, 38–44, and W. I. Jennings, *Parliamentary Reform*, Chap. vii.

CHAPTER XIV

Parliamentary Government—Tendencies and Problems

MORE than three hundred years ago, the most eminent lawyer of his day, Sir Edward Coke, asserted of Parliament that its power was so "transcendent and absolute" that it could not be "confined . . . within any bounds", and in our own time no principle is more deeply embedded in the English constitution than that Parliament is a sovereign and omnipotent authority. Being such, it has power to make and repeal laws on any and all subjects, to lay any kind of a tax and sanction any form of expenditure, to call ministers to account and drive them from office, to reshape the constitution itself, and alter the form and methods of government in any conceivable direction. What Parliament, however, may do as a matter of law and what it may do as a matter of practice are two very different things. Actually, Parliament has never been, and certainly is not now, omnipotent. In the workaday world in which it functions, it finds its hands tied, no longer by a jealous monarch to be sure, nor yet by tribunals wielding the club of judicial review, but by plenty of other effective instrumentalities and forces. True enough, as new fields of government control are opened up by scientific invention, *e.g.*, radio communication and aerial transportation, or by changing conceptions of the limits to which it is desirable for public regulation to be carried, Parliament finds itself with more and more work to do. But precedent tends strongly to keep the two houses within established channels, public opinion applies powerful brakes, the very multiplication of things to be done sets up all sorts of limitations and restraints. Indeed, of actual, direct, and free control over the nation's affairs, Parliament—viewed apart from the cabinet, and simply as the body of lords and commoners sitting at Westminster—probably has a smaller amount today than at any other period within the past hundred years.

THE POWER OF PARLIAMENT—LEGAL AND ACTUAL

CHANGED RELATION TO THE ELECTORATE

Let us see what has happened. To begin with, Parliament's relation to the electorate — the people back home—has developed on such lines as to result in considerably less freedom of action, for commoners at all events, than a century ago, or even less. Time was when the houses could deliberate without being much in the public eye. There were no telegraphs or telephones, newspaper service was slow and scant; people travelled but little; public opinion—outside of the capital, at all events—had small opportunity to form or function. Now, all is different. As Lowell remarks, "a debate, a vote, or a scene that occurs in Parliament late at night is brought home to the whole country at breakfast the next morning, and prominent constituents, clubs, committees, and the like, can praise or censure, encourage or admonish, their member for his vote before the next sitting of the House."[1] Parliament works today in the glare of pitiless publicity, which may be a good thing, but certainly puts a damper on the spontaneity and freedom with which it acts. The increased size of the electorate serves as another deterrent; it costs more to be elected than when the voters to be captured were less numerous, and members are proportionately hesitant about supporting any measure or policy likely to start a back-fire in the constituencies. More members than ever before are the servants of trade unions, cooperative associations, or other special groups or interests, and take orders from these instead of acting according to their own independent judgment. Lobbying has not become the fine art with which we are familiar in the United States; yet in the vicinity of the Houses of Parliament will be found the headquarters of plenty of organizations—industrial, labor, military and naval, educational, religious—which keep close watch on members and apply pressure to them as opportunity affords.[2] Party organization and discipline, too, have reached such a point that members must speak and vote, not so much for themselves, or even for their constituents, as on lines prescribed by ministers and whips. And the idea that decisions involving major matters of policy ought not to be arrived at until the nation has had an opportunity to express itself on them at a general election has made at least enough headway to put the two houses under a certain amount of added restraint. In a word, Parliament must nowadays keep its ear to the ground and be guided by

[1] *Op cit*, I, 425.

[2] A recent work pertinent to the relations between the House of Commons and economic and other interests is J. A. Thomas, *The House of Commons, 1832–1901; A Study of Its Economic and Functional Character* (London, 1939).

what it hears, or thinks it hears—from constituents, from "interests," from party leaders—to a far greater degree than in earlier times.

CONTROL BY THE CABINET:

All this is important. Even more so, however, is the growth of the power of the cabinet at Parliament's expense; indeed, the increasing dominance of the cabinet represents probably the most important single development of the British constitution in the past fifty years.[1] We know well enough what the theory of cabinet government is The ministers are members of Parliament, they (in Britain, a limited group of the more important ones) formulate policy and introduce bills; they see to the carrying out of the measures enacted, and indeed of all other law, singly and collectively, they are responsible for all executive and administrative acts; this responsibility lies in the direction of the House of Commons, of which, speaking broadly, the cabinet is a working committee, the group is in no sense an independent authority, but only the servant of the House, charged with its high duties for only so long as it can hold the confidence and support of that body. It was on these lines that Bagehot, 70 years ago, skillfully analyzed the relations existing between the cabinet and its parliamentary master. The theory, as a theory, still holds. But for a good while the facts have been growing more difficult to reconcile with it.

1. IN LEGISLATION

Take first the matter of legislation. A hundred years ago, the cabinet as such had relatively little to do with the processes of law-making. Even then, the ministers were, with few exceptions, members of Parliament. But their duties were chiefly administrative, and they bore no disproportionate share in the legislative activities of the houses. Now, all is different. They write the Speech from the Throne which announces general policy. They develop the legislative program of a session. They decide in what order matters of major concern shall occupy the attention of the houses, direct the preparation of bills on these subjects (with no opportunity for non-ministerial members to participate in preliminary discussions), introduce them, explain and defend them, push them to enactment, take full responsibility for them both before and after they are passed, and throw upon the House of Commons the onus of upsetting the government and very likely precipitating a general election if any of their weightier proposals are ignored or

[1] In the sense of personnel, the cabinet is, of course, contained within Parliament, of which it merely forms a part But this does not invalidate the sharp *functional* distinction made in the present discussion between the cabinet as an autonomous working body and Parliament viewed as a whole.

rejected. They demand, and obtain, for the measures in which they are interested, most of the time of the houses—all of it in the House of Commons after a certain stage of a session is reached. They crack the whip of party loyalty over the heads of their supporters on the benches and make it next to impossible for even the ablest and most spirited among them to question publicly, much less to vote against, the legislation upon which Whitehall has resolved.[1]

The upshot is both obvious and significant. "To say," remarks the American writer who has made the closest study of the subject, "that at present the cabinet legislates with the advice and consent of Parliament would hardly be an exaggeration; and it is only the right of private members to bring in a few motions and bills of their own, and to criticize government measures, or propose amendments to them, freely, that prevents legislation from being the work of a mere automatic majority."[2] Law-making, as another writer observes, has been "annexed by the government." To be sure, the houses still have a good deal of opportunity to discuss larger phases of public policy, and it is at this point that they nowadays do their best work. Yet even here the cabinet ordinarily has the great advantage of formulating the problems and setting the stage for debate; sometimes it has so far committed the country to a given course of action that there can be no backing down without stultification; and since questions of policy are almost invariably considered on party lines, the ministers usually have only to convince and satisfy their own supporters. Like most legislatures in countries having cabinet governments, Parliament almost never initiates or creates, but rather only reviews, and usually accepts and registers, policy.

2. IN FINANCE

In the broad field of finance, control by the ministers is more absolute still, (1) because, as we have seen, the House of Commons will give no consideration at all to any request for money that does not come from, or at all events have the express approval of, the crown; (2) because the government majority will rarely fail to support whatever the ministers ask; and

[1] There are, of course, occasional situations in which quite the reverse is true. Unmistakable popular disapproval of a measure sponsored by the cabinet may lead the ministers to submit rather tamely to demands for amendment, or even to abandon a project altogether. When Mr. Baldwin's "national" government, in 1934, introduced its famous incitement-to-disaffection bill, it took for granted the measure's enactment as offered, only to encounter such manifestations of public condemnation as to lead it meekly to accept amendment after amendment offered on the floor of the House. Even in this instance, however, a huge and submissive majority would have enabled the bill to be jammed through in its original form if the cabinet had been so indiscreet as to persist in flying in the face of public opinion.

[2] A. L. Lowell, *op. cit.*, I, 326.

(3) because, on this account as well as from pressure for time, consideration of a large part of the estimates is invariably a mere matter of form.

3 IN ADMINISTRATION

What of Parliament's relation to the executive and administrative work of the government? Here, less startling changes are to be recorded, because at no time in the past has Parliament either actually or theoretically wielded such direct control as in the domain of legislation. Even in this field, however, the tendency has been in the same direction. Most cabinet members are principal officers in the great executive departments. As ministers, their business is to supervise the work carried on in and through these departments; and ever since the cabinet system assumed its matured form, their direct and full responsibility to the House of Commons for all of their executive actions has been accepted as axiomatic. The theory is that the ministers are responsible to the elected chamber for all that they do, singly in small or isolated matters, collectively in more important ones, that their acts are constantly subject to inquiry and criticism; and that the great powers which they wield can be stripped from them at any time by the simple withholding of support. There are, furthermore, several recognized methods by which this responsibility can be asserted and enforced, and some mention of them may well be made before comment is ventured upon the extent to which the ministers' executive work is actually controlled.

METHODS OF ENFORCING MINISTERIAL RESPONSIBILITY:

1. QUESTIONING MINISTERS

First—starting with the mildest—is the device of the "question." Subject to a few limitations laid down by the rules, any member of the House may address queries to a minister, actually or ostensibly to obtain information, and relating to either legislative or administrative matters. Until three-quarters of a century ago, this right was not much used, but nowadays the number of questions put at every session runs into the thousands; and, as we have seen, "question time" is a regular, and usually an interesting, portion of every daily sitting. Sometimes the questions have no object whatsoever except to elicit information; and the questioner may be entirely satisfied with what he hears. They may come from the minister's political friends no less than his foes. More often, however, they are intended to imply criticism, and to place the minister and his colleagues on the defensive. It is the minister's privilege to decline to answer if he likes, all he needs to say is that to reply would be contrary to the public interest. But arbitrary or too frequent refusal will, of course, tend to create an unfavorable

impression. The process of answering questions, as Lowell remarks, gives to the Treasury Bench an air of omniscience not wholly deserved, because, a given query having been put on the "question paper" in advance, opportunity is afforded for the minister's subordinates to look into the matter involved and supply him with the necessary data. In most cases, all that the minister has to do with the replies is to read them to the House. Undeniably, the question privilege is liable to abuse; the questioner is sometimes actuated by no very lofty motive, and a good deal of time is consumed on trivial matters. As an English authority testifies, however, "there is no more valuable safeguard against maladministration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates." [1]

Although a means of calling ministers to account, questions do not, of themselves, involve a debate or a vote. Whether answered satisfactorily or not, they do not immediately endanger the tenure of the ministry—except in one contingency. If a member, seeking fuller information or bent upon testing the government's strength, moves "to adjourn for the purpose of discussing a definite matter of urgent importance," and if as many as 40 members support the motion, a debate takes place, nominally on the motion to adjourn, but actually on the subject involved in the question and answer. The government opposes the motion, and if defeated must resign or ask for a dissolution and appeal to the country. Although furnishing means by which any specific act or omission of the government can be made the basis of a vote of censure, this procedure is not often brought into play; and while bearing a certain resemblance to the Continental device of interpellation—which, indeed, was derived from it—it lends itself in no such fashion to the swift upsetting of ministries, often on mere pretext.[2]

2. MOTIONS AND VOTES OF CENSURE, OR OF "WANT OF CONFIDENCE"

Whether or not arising in connection with questions directed to ministers, motions of censure, or motions expressing general want of confidence, may put the cabinet on the defensive and lead either to its resignation or a dissolution. A motion of censure may be directed at an individual minister, specifying particular acts or policies for which he is held responsible. Normally, the cabinet will rally to the minister's defense; and such motions are not only less frequent than in the French Chamber of Deputies, but

[1] C. Ilbert, *Parliament*, 113–114. Cf. R. W. McCulloch, "Question Time in the British House of Commons," *Amer. Polit. Sci. Rev*, Dec, 1933.

[2] See pp. 528–530 below.

far less likely to prove disastrous. Speaking generally, the theory and practice in England is that the ministers shall stand or fall upon their general policy, upon their record as a whole, or if upon a particular matter, at all events only upon one of first-rate importance. On this broader ground, they are perpetually exposed to criticism and attack. At the very beginning of a parliamentary session, censorious amendments provoked by the announcement of policy contained in the Speech from the Throne may be pressed to a vote and may culminate in an expression of want of confidence; and at any later stage a motion of no confidence may lead not only to embarrassing discussions but to hostile votes. Ordinarily, the government will not dare attempt to prevent debate on motions of the kind; and defeat in an ensuing division—which is squarely on the issue of turning out the ministry—must immediately be followed by resignation or a dissolution.

PARLIAMENT'S ACTUAL RÔLE IN RELATION TO ADMINISTRATION

In such ways are the ministers, in their executive capacity, held to their presumed responsibility.[1] It does not follow, however, that the House of Commons participates in, or indeed to any great extent interferes with, the ministers' administrative work. Not only does that body refrain from itself trying to perform administrative tasks, but it as a rule undertakes to regulate them, as performed by others, on only the most broad and general lines. Its business is to furnish the inquiry and criticism that will keep the ministers and their subordinates up to the mark—not to issue orders in advance as to what such officials shall do, but to survey the things they have already done and hold them to account therefor It accordingly does not attempt to say how the departments shall be organized, how large their staffs shall be, what the civil servants shall be paid, or how reports shall be prepared. It does not expect any appointments of officials, high or low, to come before it for confirmation. It indeed keeps hands off the executive and administrative machinery in a fashion quite unknown to the American Congress, which, notwithstanding our supposed deference to the principle of separation of powers, insists on reaching over into the executive and administrative spheres and regulating even the matter of salaries down to the last detail. The growing volume of business in the House of Commons makes it impossible for that body to scrutinize

[1] It should, perhaps, be added that executive acts and policies may be made the subject of inquiry or investigation by special committees, and that the reports of such committees may become means of putting the government on the defensive, and even of forcing it from office. Such investigations are, however, not frequent, and they do not often have disastrous results.

the work of the government even as closely as was formerly done, which of course means just so much more freedom of action in the great offices in Whitehall. Scarcely a ministry in 50 years has been turned out of office by a hostile parliament because of its administrative acts; and the chances of such a thing happening have of late been steadily diminishing.

SOME CONSEQUENCES OF THE CABINET'S DOMINANT POSITION:

From the developments described flow consequences both desirable and otherwise. The first that strikes the eye is a highly integrated and relatively continuous leadership in legislation, contrasting sharply with the divided, shifting, and precarious leadership found most of the time in the American Congress. For every session there is a program, not only of financial, but of all other legislation—a program prepared by the cabinet, introduced and managed by cabinet members, and so favored by the rules of procedure that it cannot be shunted off the main line or seriously impeded by rival legislative proposals from non-ministerial sources. In the United States, no member of the executive branch can introduce a bill, or support one from the floor of either house; and while there is often an "Administration program" of legislation, it rarely presumes to cover all of the important subjects likely to come up, it is put on the congressional calendars only in piecemeal fashion as senators or representatives can be induced to sponsor different parts of it, and there is no such likelihood that it will prevail as in the case of a government program introduced at Westminster. There are those who believe that the centralization and unification of legislative leadership have been carried too far in the British system—that cabinet government has overreached itself in this regard and become sheer cabinet dictatorship.[1] In so far as concentration of initiative and unity of plan are useful, however, the British system certainly leaves nothing to be desired.

1. LEADERSHIP AND UNITY IN LEGISLATION

2. STABILITY OF MINISTRIES

Another consequence of what has happened is greater stability for the ministry than prevails in some other countries having a cabinet form of government. Political, *i.e.*, party, homogeneity is, of course, one reason why cabinets, on the average, last considerably longer at Whitehall than for example in Paris. But another reason is to be found in the power which the cabinet possesses to turn upon a rebellious parliament, procure its dissolution, and subject its members to the trouble and expense of recapturing their seats, if they can, at

[1] R. Muir, *How Britain Is Governed* (3rd ed.), 87–91.

a general election. Confronted with this standing threat, a government majority can usually be depended upon to see that the ministers get what they ask, whether or not there is any genuine enthusiasm for their proposals. Armed with paramount rights of initiative, supported by procedural rules drawn in its favor, and holding the power of life and death over Parliament itself, the cabinet indicates what is to be done; and Parliament, on its part (at all events, the House of Commons), shrinking from the possible consequences of refusal, complies. Well might a Frenchman, observing ministries in his own country toppling and rebuilding every few months, envy the stability of Whitehall! On the other hand, noting the unquestionable decline of free parliamentary life on the Thames-side, he might also feel that stability can be bought at too great a price.

3. OVERLOADING OF THE CABINET

For, quite apart from the general question of whether it is a healthy state of things for any group of 20 men (or fewer) to hold such power in a representative government as that now wielded by the British cabinet, there are other aspects of the situation that arouse misgivings. One of them is the fact that the cabinet has arrogated to itself far *more work than it can perform efficiently*—"colossal responsibilities which it cannot meet." Cabinet ministers are commonly diligent and reasonably capable. But their days are only 24 hours long, and their energies not inexhaustible. Immersed in problems and tasks of the moment, they too often find it difficult or impossible to undertake larger services which the cabinet alone is fitted to perform, especially in the direction of (1) coordinating the work of the departments and (2) large-scale and long-time planning. Overworked though it is, however, and obliged to neglect many things that ought to be done, every cabinet, irrespective of party, clings resolutely to the multifold prerogatives that have descended to it, and indeed reaches out for more.

4. ECLIPSE OF THE "BACK-BENCHER"

As the cabinet has waxed, Parliament has waned. Everybody agrees that there has been not only a decline in parliamentary oratory, but also a falling off of members' interest in what goes on. In the House of Commons, where the change is most marked and also most significant, many circumstances—among them, the use of closure—have helped bring this about. But a main factor is the growing sense of the futility of debate on measures, the form and fate of which have already been largely determined before the House so much as saw them. Occupants of the Front Treasury Bench will, of course, explain and defend their bills. Occupants of the Front Opposition

Bench will, from force of habit, if not from hope of rallying enough resistance to trip up the government, criticize and denounce. But for the "back-bencher" (and that means the great bulk of members, government and opposition alike) there is not much opportunity, either to influence decisions or to win prestige. He may, of course, gain a fleeting prominence at question time; he may propose amendments to government bills when in committee stage; he may introduce bills of his own on any except financial subjects; he may get the eye of the speaker and have some part in debate. But so far as any independent bills of his own are concerned, he may be pretty sure that, unless they deal with unimportant, or at any rate non-controversial, matters, they will never be advanced beyond second reading;[1] and as for debate, he may usually as well recognize before he starts that no argument that he can make will have much effect on the outcome, although, of course, if it shows ability it may serve to bring him to the notice of the powers that be and thereby improve his outlook for a career. It does not matter much whether he is a government or an opposition member. The former is no more consulted than the latter on measures which ministers propose to introduce. "He sees them only when they come from the printers; and then he knows that, whether he likes them or not, he will be expected to support them by his vote in the lobbies."[2]

Students of legislation are aware that in all parliamentary bodies some members lead and others follow. Hardly anywhere else, however, do the bulk of members so largely forego liberty of action as in the British House of Commons. There is considerably more chance for the private member to get important bills acted upon, to help turn the tide in debate, and to vote independently, in the French Chamber of Deputies and other Continental legislatures; and the position of the ordinary congressman in the American House of Representatives is a decidedly freer one. The latter may not only introduce, but secure action on, bills of any character whatsoever, excluding only certain types of money bills; he can take nearly as much, and conceivably quite as effective, part in debate as anybody else, he can, and frequently does, oppose measures sponsored by the leaders of his party, including the president; he may even vote against such measures with impunity, at all events if—as is true of a large

[1] On an average, about 85 per cent of the government bills introduced in a session become law, but only 10 or 12 per cent of private members' bills.

[2] S Low, *Governance of England*, 79. It must be borne in mind, of course, that a member's activity and usefulness are not measured solely by his participation in debates and divisions There is, for example, his work on committees (both on public and on private bills), on investigating commissions, etc.

proportion of bills—they have not been made the subject of caucus action. Party lines are maintained so much less rigidly at Washington than at Westminster that, as compared with the British back-bencher, the "gentleman from New York," or "from Texas," is a free agent indeed. How largely this contrast arises from the commanding position of the cabinet, backed by effective party discipline, in the one case and the infrequency of any comparable executive leadership and pressure in the other, must have become sufficiently apparent to require no comment.[1]

CURRENT DISSATISFACTION WITH PARLIAMENT

As a great historic agency of popular self-government, Parliament has long held a high place in the nation's esteem. In the troubled period since the World War, however, it has suffered a decline in repute, and although still viewed proudly by most Englishmen as a bulwark of representative government in a world of collapsing democracies, it is also the object today of much doubt, criticism, and solicitude. From a position far to the left, a small but noisy Communist element proposes to displace it altogether by a supreme soviet patterned after that of the U.S.S.R. Equally far to the right, a Union of Fascists envisages a "totalitarian" state, with Parliament reconstructed on a "corporative" basis similar to that prevailing in present-day Italy. More moderate critics do not go so far in either direction, but nevertheless contend that parliaments (the British included) as constituted today are bankrupt and will have to be reconstructed and reoriented drastically before they will function acceptably. Still other people consider that the British Parliament as it stands is by no means played out, but merely the victim of circumstances that have come about naturally, perhaps inevitably, and that to a considerable extent can be overcome or alleviated. They see, with Lord Bryce, many conditions that have been tending to reduce the prestige and authority of legislative bodies,[2] but believe, as he also did, that, with cautious readjustments and reforms, such bodies will remain effective instrumentalities of popular government. In particular, they deplore the decline of the House of Commons

[1] The changing relations of Parliament (especially the House of Commons) and the cabinet are discussed pointedly in R. Muir, *How Britain Is Governed* (3rd ed.), Chap. III. Cf. A. L. Lowell, *op. cit.*, I, Chaps. XVII-XVIII, S. Low, *Governance of England*, Chap. V. American students will be well aware that presidential leadership, and even discipline, in legislation *occasionally* rises to a high level, as notably with Woodrow Wilson in 1913 and Franklin D. Roosevelt in 1933 and after. But the usual situation is otherwise.

[2] *Modern Democracies*, II, Chap. LVIII, on "The Decline of Legislatures." Cf. F. A. Ogg, "New Tests of Representative Government," *Univ. of Chicago Record*, XII, No. 4 (Oct., 1925).

as a deliberative assembly because of the overcrowding of its calendars, the tendency to progressive concentration of power in a cabinet already too autocratic and too preoccupied with routine to be able to discharge its larger functions acceptably, the inadequate check-up on the administrative activities of the government when the estimates are being considered, the delays and uncertainties encountered in bringing about legislation on matters of grave public import, the extinction of the private member except as an automatic voter. They more or less appreciate the fact that the power of the cabinet, like that formerly wielded by the American speaker, has developed out of the necessity for supplying direction and leadership to the spontaneous and often misdirected energy of the House; and they are fully aware that the complexities of modern life render it necessary for law-making to be increasingly the business of experts. They believe, however, that ways can be found of restoring the deliberative character of the House and redressing the balance between House and cabinet on something like the traditional lines; and to this end most of their practical proposals are directed.

SOME FUNDAMENTAL DIFFICULTIES

Disregarding the opinions of the very small number of Englishmen who would do away with existing political machinery and methods altogether, current criticisms aimed in the direction of Westminster boil down substantially to two: (1) Parliament has too much to do, and (2) even if this were not the case, it is not the most suitable agency for performing certain of the tasks now entrusted to it. Upon the fact of overloading there is no difference of opinion; the records of any average session furnish abundant evidence. Especially significant are the hurried consideration given most measures, the failure of numerous important government proposals so much as to get upon the calendar, the repeated instances in which parliamentary and royal commissions carry on extensive investigations and submit painstaking reports, only to see their work become useless as a basis for legislation because of the inability of Parliament to get around to the subject until after the data have become obsolete. A thing that is often overlooked is that the parliament that sits at Westminster is, in truth, a dozen or more parliaments rolled into one. Under varying conditions, it must function not only for England separately, but also for England and Wales, for Northern Ireland, for Scotland, for Great Britain, for the United Kingdom, for India, for the crown colonies (singly and collectively), for mandates and protectorates—even, to some extent, for the Empire at large; being, in these several capacities, "responsible, directly or indirectly, for the peace, order,

and good government of a quarter of the population of the earth." Small wonder that, in these days of rapidly expanding governmental regulation, the burden has become intolerable![1]

REMEDIES, ADOPTED AND PROPOSED

Such remedies as have thus far been applied have been aimed chiefly at expediting the handling of business, once it is before the House. One of them is the use of committees—especially the standing committees—as described in an earlier chapter. Another is the introduction of the various forms of closure. A third is the progressive modification of the rules, beginning as far back as 1811, so as to give precedence to government bills, together with the shortening of the time for considering the estimates of expenditure to 20 days. A fourth is the growing practice of delegating to the king-in-council, to executive departments, and even to local authorities, power to issue orders and make rules filling out and applying legislation which Parliament has enacted only in skeleton or outline form. All of these things have been done reluctantly, and at a price; and yet the problem remains. Business in hand is expedited somewhat, but the amount still pressing for attention seems as formidable as before. Not only is it appalling in quantity, but to an increasing degree it calls for a specialization of knowledge and a technical skill which no legislature made up on the lines of an ordinary national parliament can be expected to possess.

DEVOLUTION

In the face of this situation, Englishmen have in later years turned somewhat hopefully to a variety of proposals which may be grouped under the general term "devolution." The central idea is that a good deal of work for which Parliament is now responsible should be "devolved" upon, *i.e.*, turned over to, other bodies or authorities which could in many cases perform it better, while that left at Westminster would also be performed more deliberately and effectively than now. In other words, congestion at Westminster should be relieved, not only by devices promoting quicker decisions in the House of Commons, but by a division of labor calculated to prevent certain business from going to that body at all. There has, of course, been a good deal of "devolu-

[1] A broad and critical survey of the workings of the House of Commons will be found in H. J. Laski, *Parliamentary Government in England*, Chap iv. The difficulties and shortcomings of Parliament are discussed in almost innumerable books, articles, and documents, and it must suffice to mention here W. I. Jennings, *Parliamentary Reform* (London, 1934); Lord Eustace Percy, *Government in Transition* (London, 1934); and F. Fox, *Parliamentary Government. A Failure?* (London, 1932).

tion" already; the delegation of legislative power to executive and administrative authorities is a familiar species of it. Devolution on a grander scale than heretofore has, however, been urged; and the present survey may appropriately close with some mention of the principal plans proposed.

TWO POSSIBLE BASES OR PRINCIPLES:

If work now falling to Parliament were to be reassigned, the basis employed might obviously be either geographical or functional. That is to say, specified, but more or less miscellaneous, powers might be transferred to substitute bodies set up in and restricted to designated sections of the country; *or* control over a more or less integrated group of public affairs might be relinquished to one or more bodies operating throughout the land as a whole. In the degree to which the one plan or the other were adopted, the result would be territorial devolution or functional devolution.[1]

1. FUNCTIONAL

Both schemes have ardent advocates. In general, the functional plan is favored by the more radical political elements, the territorial by the more conservative; although plenty of people are still disinclined to see either proceeded with to any great extent. The functional principle could, of course, be applied in connection with many different fields of governmental control, *e.g.*, education and public health, for each of which might conceivably be set up a separate national body charged with either conditional or absolute legislative power. As a matter of fact, however, the idea has thus far been urged almost solely in relation to matters of an economic nature. Thus a large portion of the Labor party follows Lord Passfield (Sidney Webb) and Beatrice Webb in their proposal to draw a sharp line between political government and economic, or industrial, government, to set over against the political parliament and the present political executive an economic parliament with separate executive organs, and thereby to accomplish the double purpose of achieving industrial (equally with political) democracy and relieving the present political parliament and cabinet of an appreciable share of the burden of work under which they stagger.[2]

[1] The distinction is fundamental, but of course not absolute. Devolution according to areas would necessarily involve devolution to some extent also by subjects

[2] *A Constitution for the Socialist Commonwealth of Great Britain*, Pt. ii, Chap. i In "A Reform Bill for 1932," *Polit Quar*, Jan.–Mar., 1931, Mrs. Webb presents a plan under which a new national assembly (with its own national executive) would have functions extending considerably beyond "economic" in the narrower sense of the term

2. TERRITORIAL

On theoretical grounds, there is a good deal to be said for the functional principle. Most people, however, believe that the rescue of parliaments from their present congested condition must be by means of organs definitely subordinate to them, rather than through independent or quasi-independent authorities. Moreover, recent association of the functional idea with various forms of Continental radicalism and reactionism, *e.g.*, bolshevism and fascism, has cooled even such interest as the average Englishman's native conservatism had permitted him to develop. Certainly public feeling today is not, on the whole, favorable to the adoption of any definite functional plan. Territorial, or regional, devolution is, however, not only a much-discussed, but a reasonably practical, proposal. The essential idea in it is that the congestion of business from which both Parliament and cabinet suffer might be relieved, and legitimate aspirations to regional self-government at the same time satisfied, by dividing the kingdom into certain great areas, each to be given a subordinate yet moderately powerful, parliament of its own, with suitable arrangements also for administration by regional authorities. Under such an arrangement, a great deal of the business that now clutters up the calendars at Westminster would pass over entirely to the regional assemblies; and although the latter would not be sovereign bodies in the same sense as the imperial parliament, most of their acts would not require even so much as review by that authority.

NATURAL AREAS FOR PURPOSES OF DEVOLUTION

Adoption of the plan, furthermore, would not necessitate cutting the country into new and arbitrary divisions; for although it is occasionally suggested that the areas for the purpose should be formed by combining counties in more or less artificial groups, it is usually considered that both the natural and proper areas would be the great historic lands from which the United Kingdom was constructed, *i.e.*, England, Wales, Scotland, and Ireland. As things now stand, much legislation—estimated to consume, in the aggregate, a full quarter of Parliament's time—has to be enacted at Westminster for one or another of these regions separately. Let the bulk of this regional legislation, it is argued, be turned over to regional parliaments, so that the parliament at Westminster may be freer to give proper time and attention to the affairs of the realm in general, including those of England—unless a subordinate parliament should be set up for that area also. The argument is strengthened not only by the circumstance that Scotland and Wales have developed con-

siderable sentiment in favor of parliaments of their own, but by the fact that Northern Ireland, under the Government of Ireland Act of 1920, has been given a separate legislature, and therefore affords a true example of devolution already in operation—to say nothing of the rest of Ireland with its quasi-independent status.[1]

PROPOSALS OF A SPEAKER'S CONFERENCE (1920)

At the close of the World War, it was common opinion that Parliament had reached its lowest ebb, and it is not strange that, at a juncture when constitutional readjustment was much in the public mind, devolution should have become a leading subject of discussion—the more by reason of the fact that the Irish question was still awaiting settlement. The House of Commons took up the matter, and, after lively debate, went on record, in 1919, by a decisive vote, in favor of "the creation of subordinate legislatures within the United Kingdom" and asked the government to appoint a parliamentary commission to prepare a plan. The result was a "speaker's conference," which in the spring of 1920 laid before Parliament, not a single plan—because complete agreement was found impossible except on the main question of whether devolution was desirable—but two alternative plans, one commonly referred to as the speaker's plan. the other as the plan of Mr. Murray Macdonald, one of the minority members.[2] The government having introduced a new bill on Ireland while the commission was deliberating, it was decided to leave that part of the realm out of account. But there was unanimous agreement that subordinate legislatures should be created in England, Scotland, and Wales; and, strangely enough, there were no wide differences of opinion upon the powers that might properly be transferred to them. In general, these powers embraced all regulation of trades and professions, police, public health, public charities. agriculture, law and minor judicial administration, education, ecclesiastical matters, housing, insurance, highways, and municipal government, together with control of a long list of sources of public revenue.

The main difference between the two schemes related to the composition and form of the proposed regional legislatures. Under the speaker's plan, each area was to have a "grand council" consisting of (a) a council of commons, composed of all of the members of the national House of Commons sitting for constituencies within that

[1] See pp. 378–379 below.

[2] *Conference on Devolution: Letter to Mr. Speaker from the Prime Minister* (with appendices). Cmd. 692 (1920).

area, and (b) a council of peers, consisting of members of the House of Lords designated by the committee of selection of that body, and half as numerous as the members of the lower house. All members of the divisional parliaments should, therefore, be members also of the general parliament; and the meetings of the former were to be held in the autumn of each year so as to avoid conflict with the sessions of the latter.[1] The Macdonald plan, on the other hand, provided for divisional parliaments whose members should be specially elected to them, without relation to membership in the national parliament. This would enable them to sit when and as long as they pleased; and they were to be organized in one house or two as the government should later determine.[2]

OBJECTIONS AND OBSTACLES

It was one thing to contemplate the beauties of devolution in the abstract, and quite another to take responsibility for the constitutional wrench that would be necessary to put it into effect. The commission's plans attracted much attention, both at Westminster and throughout the country. But the nation was not ready for the plunge; no political party has ever made the subject an issue; and to the present time nothing further has happened—beyond intermittent discussion, and, perhaps one should add, the enactment in 1929 of a local-government statute containing decentralizing provisions which, so far as they go, are in line with the devolution principle. The proposal in general and the plans of 1920 in particular have been criticized on many grounds. It is objected that to proceed on any of the lines suggested would mean to turn back the pages of history—to loosen bonds of union which, as Mr. Balfour once reminded his countrymen, 200 years of constitutional development have consistently aimed to strengthen. The Irish settlement has, of course, shattered some of those bonds irreparably; the less reason, it is argued, for deliberately weakening those that remain. When actually tested, any thoroughgoing plan of devolution would, it is further contended, prove a disappointment. Certainly in the form proposed by the committee majority of 1920 it would not make life any easier for persons who should find themselves members of two parliaments instead of one. But in any case the effect would be to duplicate machinery, compli-

[1] This scheme might be viewed as, in essence, an extension of the existing committee system, except that (1) the regional bodies would be *joint* committees, (2) they would sit elsewhere than at Westminster, and (3) they would have power not merely to discuss and report but also to act

[2] The work of the conference and the schemes proposed are described at length in W H Chiao, *Devolution in Great Britain* (New York, 1926), Chap. vi

cate tasks, and produce confusion and conflict of jurisdiction, to such an extent that the wear and tear of present legislative life would be relieved only slightly, if at all. Particularly prolific of difficulties would be the bisection or trisection of services which by their nature need to be handled integrally, the necessary but nearly impossible allocation of control over revenues, and the inevitable tendency to conflicting legislation.

POSSIBLE IMPROVEMENTS WITHOUT DEVOLUTION

Finally, it is plausibly asserted that the time and effort of the House of Commons—possibly of the cabinet also—could be economized appreciably by changes less drastic than would be involved in a general scheme of devolution, and with fewer disadvantages. One such readjustment would be the oft-discussed extension of the committee system in connection with handling the estimates. Another would be the transfer of all private-bill legislation to an entirely distinct body, of a frankly judicial character, and able to sit locally when, as in large numbers of cases, there would be gain in doing so. In reality, this would itself, of course, be a species of devolution, on functional lines; and it may be added that the increasing use of provisional orders has already materially reduced the number of private bills appearing at Westminster, and therefore the labor involved in handling them. Still another mode of relief would be the granting of wider powers to county, borough, and other local authorities—a policy which some capable students of the problem believe would of itself yield all the saving of Parliament's time that could possibly be realized from any scheme of devolution. Of such decentralization—on lines which in America would be termed "home rule"—there has already, of course, been a good deal, notably under the local government act of 1929. There will be more, in certain directions; although if we accept the common view that the trend of modern social and economic development is toward consolidation and integration, calling for more uniform and concentrated legislative control, the gains to be looked for from this source are problematical.

At all events, how to reconcile the legitimate interests of the cabinet with the equally legitimate rights of parliamentary minorities; how to find time within parliamentary hours for disposing of the growing mass of public business; in what measure, and by what means, Parliament can hope to recover its lost prestige—these and other questions (plenty of them) challenge the British statesman at every turn. Solutions will have to be found. When

arrived at, however, they will probably be discovered to have taken the characteristic English form, not of wholesale change carried out according to a theory, but of slow and piecemeal readjustment.[1]

[1] The case for devolution is argued affirmatively in R. Muir, *How Britain Is Governed* (2nd ed.), Chap. viii; J. A. M. Macdonald and Lord Charnwood, *The Federal Solution* (London, 1912); J. R. MacDonald, *Parliament and Revolution* (New York, 1920), Chap. viii; and W. H. Chino, *Devolution in Great Britain* (New York, 1924), Chaps. ii–iii. Objections are voiced in H. J. Laski, *A Grammar of Politics*, 100–311; H. Finer, *The Theory and Practice of Modern Government*, II, 848–851; and W. I. Jennings, *Parliamentary Reform*, Chap. II, in which the view is advanced that devolution gives no promise of substantial relief.

CHAPTER XV

Political Parties: Historical Development

THE cardinal feature of English government is the responsibility of ministers, as framers of policy and directors of administration, to the popularly elected and controlled House of Commons —in other words, the cabinet system. Implied in the arrangement, and indeed essential to it, is the existence of political parties. For without parties, not only would the ministry itself usually be lacking in coherence, but in the House of Commons there would be no organized force interested in upholding a given ministry, as also none of different opinion prepared to upset and displace it at the first sign of a weakened support. There would be small point to the resignation of a ministry if no opposing party—or, at all events, party coalition—stood ready to provide a ministry pledged to different policies, and to assume full power and responsibility. In the words of Ramsay Muir, "it is the leadership of a *party* that gives to the prime minister his enormous power; it is common membership of a *party* that gives unity of character and aims to a cabinet; it is the existence of an organized supporting party in the House of Commons that enables the cabinet to carry on its work, and (when the party has a majority) endows it with a complete dictatorship over the whole range of government; and this dictatorship is only limited or qualified by the fear of those who wield it lest any grave blunder may weaken the *party* in the country, and bring downfall at the next election."[1]

CABINET GOVERNMENT AND POLITICAL PARTIES

To be sure, political parties can exist where there is no cabinet system, *e.g.*, in tsarist Russia; or where cabinet government is a matter of form rather than of fact, *e.g.*, in Japan; or (on a one-party basis) even under dictatorial régimes, with of course no cabinet system, as in Fascist Italy and Nazi Germany. But in Britain—where, indeed, they made their earliest appearance—parties have been inextricably associated with cabinet government; indeed, as we have seen, parties and cabinet arose and developed simultaneously and in

[1] *How Britain Is Governed* (rev. ed.), 116.

necessary conjunction one with another.[1] Throughout most of the time, furthermore, there have been only two major parties; and this has been a significant advantage, since, as will readily be understood, the cabinet system works most smoothly when a single party is in power at any given time, with an independent parliamentary majority and undivided responsibility, and when a similarly important party stands ready to take the helm at any moment when the parliamentary situation decrees a change. Dislocation of the bi-party system flowing from the rise of Labor to major party rank, and from other political experiences of the World War era, has caused Englishmen grave concern; and, as we shall see, the eventual restoration of it is one of the nation's profoundest interests and problems today.[2]

AN OUTLINE OF PARTY HISTORY:

1. BEFORE THE WORLD WAR

The seventeenth-century origins of English parties, together with the relations of Whigs and Tories after the Revolution of 1688–89, have been indicated in an earlier chapter.[3] For a century and a half thereafter, the two great parties controlled the government by turns, each usually keeping the upper hand for a considerable period at a stretch. The Whigs were in the ascendancy under the early Georges, the Tories, gaining power in 1783, dominated throughout the era of the American and French Revolutions, and indeed until the Duke of Wellington's cabinet was swept from office in 1830. Except for two or three brief intervals, the Whigs again ruled from that date until 1874. At the outset, they were hardly less aristocratic than the Tories. But after the legislation of 1832 they were reenforced and appreciably liberalized by the infusion of newly enfranchised middle-class townspeople, and their first decade of restored power became a period of notable and long-awaited reform. This was the time, too, at which the more meaningful party names of later days came into use, the term "Whig" giving way to "Liberal" and "Tory" to "Conservative."

[1] See pp. 19–20 above.

[2] W. J. Shepard, "The Psychology of the Bi-Party System," *Social Forces*, June, 1926, is a lucid discussion of the bi-party principle. Cf. R Bassett, *The Essentials of Parliamentary Democracy*, Chap II, and G M. Trevelyan, *The Two-Party System in English Political History* (Oxford, 1926). For a fuller consideration of the relations of party and the cabinet system, see A. L Lowell, *op. cit*, I, Chap. XXIV. There is, curiously, no convenient general history of English parties, nor indeed any systematic and up-to-date treatise on the English party system Chapters XXIV–XXVII of Lowell's work treat the subject satisfactorily, except that they are out of date, and certain phases are covered exhaustively in M. Ostrogorski, *Democracy and the Organization of Political Parties*, trans by F. Clarke (London, 1902), I. An illuminating brief discussion is H. J. Laski, *Parliamentary Government in England*, Chap. II.

[3] Chap. I.

At the middle of the century, the question of tariff policy split both parties, although chiefly the Conservatives, and for a time party lines were shadowy. Under the leadership of Gladstone and Disraeli respectively, however, Liberal and Conservative morale was reestablished after 1860–65, and throughout the remaining decades down to the World War the see-saw continued, with the Liberals in power chiefly in 1868–76, 1880–86, 1892–95, and 1905–15, and the Conservatives in 1874–80, 1886–92, and 1895–1905. The Liberals now posed definitely as the party of reform and progress, and many great achievements are to be set down to their credit. Though more inclined to keep things as they were at home and to stress foreign and imperial policy, the Conservatives, nevertheless, contributed a good deal to helping on such causes as suffrage extension and local government reform, and on most matters the parties differed rather in degree than in more fundamental ways. One subject, however, on which they were really far apart was Ireland. The "home rule" movement, looking to a restoration of the Irish parliament taken away by the Act of Union of 1800, made trouble for both; indeed, a third party, the Irish Nationalists, controlling some 70 seats at Westminster, sometimes held the balance of power and made the carrying on of government difficult. In 1886, the third Gladstone ministry introduced a bill giving the Irish what they wanted, with reasonable safeguards. Failing of passage, even in the House of Commons, the measure prompted a secession of most of the elements of wealth and station from the Liberal party. Trying again in 1893, the Liberal leader had the satisfaction of seeing his plan adopted by the popular chamber—only to be frustrated this time by a hostile House of Lords. After pursuing an independent course for some years, the dissenters of 1886, known as Liberal Unionists, gravitated into the ranks of the Conservative party.[1] On the other hand, the Irish Nationalists, recognizing that the success of their cause was bound up with the fortunes of the Liberal party, became in effect an affiliated group, even though they were not very amenable to discipline and sometimes failed their allies at critical moments.

At the turn of the century, the Conservatives were in the saddle and their rivals suffering from factional differences following the removal of Gladstone's strong hand from the helm. Still interested

[1] Joseph Chamberlain was but one of the many persons of prominence who travelled this road. Reënforced by the Liberal Unionist infusion, and holding resolutely to their original position on the Irish issue, the Conservatives—until the problem was removed from the arena of politics by establishment of the Irish Free State in 1922—were quite commonly known as "Unionists."

primarily in international and imperial matters, the governing party led the country into the war in South Africa, which, although successful, was not particularly glorious from the British point of view; and the high taxes entailed, together with sharp dissension in Conservative ranks precipitated by Joseph Chamberlain's proposal for a system of protective tariffs, gave the Liberals incentive to pull themselves together and enabled them, in 1905, to capture control of the government. In a general election held early in 1906, the rehabilitated party obtained the most impressive parliamentary majority known to the history of British parties down to that time.

The next decade was a notable period of Liberal rule. To be sure, the huge majority of 1906 melted away at the elections of 1910. Supported, however, by the Irish Nationalists and by the rising Labor party, Liberal ascendancy went on without interruption until after the outbreak of the World War in 1914. Few decades in modern English history have been more productive of significant legislation or more provocative of constitutional discussion. Bent upon carrying out an ambitious program of economic, social, and political reform, the Campbell-Bannerman and Asquith governments found their main obstacle in the massive Conservative majority in the House of Lords; and the outstanding development of the period became the curbing of the powers of that body as accomplished in the memorable Parliament Act of 1911.[1]

2. PARTIES IN WAR-TIME:

A. TRUCE AND COALITION

When, in the summer of 1914, war with Germany became a certainty, leaders of all parties and groups entered into a truce designed to shelve controversial matters and to stop partisan activities of every sort for as long as the conflict should last. With a party ministry in office, however, and with the war presently giving promise of being far more protracted than had been anticipated, dissatisfaction arose, and with it the idea that the ministry ought to be reconstructed so as to

[1] Notwithstanding the dearth of party histories, mention may be made of H. Fyfe, *The British Liberal Party; An Historical Sketch* (London, 1928), M. H Woods, *A History of the Tory Party in the Seventeenth and Eighteenth Centuries* (London, 1924), with a substantial chapter on the Conservative party in the nineteenth and twentieth centuries, F. J. C. Hearnshaw, *Conservatism in England* (London, 1933), and F. H. O'Donnell, *History of the Irish Parliamentary Party*, 2 vols (London, 1910). It goes without saying that a great deal of party history will be found in general historical works, such as those of W. E. H. Lecky and Spencer Walpole, and in biographies, autobiographies, and memoirs of men like the elder Pitt, Peel, Gladstone, Disraeli, Rosebery, Lord Salisbury, Joseph Chamberlain, Balfour, Asquith, and Lloyd George.

include, for the period of the emergency, the ablest men who could be brought together from all of the parties. The upshot was the adoption, in May, 1915, of a scheme of coalition, the Liberal prime minister, Asquith, remaining at the helm but distributing the ministerial posts in approximately equal numbers between Liberals and Conservatives, with also some representation for Labor. No one would have supposed that seven long years would pass before Britain should again have a ministry made up on the traditional party basis. Yet so it proved.

B. THE TRUCE BREAKS DOWN

The novel arrangement did not always work smoothly. From time to time, dissatisfied ministers threw up their positions, and more than once the entire plan seemed to be going on the rocks. A general reorganization late in 1916 brought Mr. Lloyd George into the premiership, introduced the device of the war cabinet, and imparted fresh vigor to the prosecution of the conflict overseas. But it left the friends of the deposed Asquith disgruntled and marked the beginning of a rift in the Liberal ranks which, aggravated by the sharply differing backgrounds, temperaments, and techniques of the two principal leaders, culminated in an open split in the party and the emergence of the Asquith, or Independent, Liberals in the rôle of a small but troublesome parliamentary opposition. Furthermore, in the early summer of 1918 the Labor party decided, over the protest of certain of its representatives in the ministry, to repudiate its agreement of four years previously and to begin working independently toward the goal of a Labor government. Months, therefore, before military victory was assured, the truce of 1914 broke down; and by the date of the armistice (November 11, 1918) the country was again witnessing party strife almost as heated as before the war, even though the lines were drawn differently and the issues considerably less clear.

C. LABOR BECOMES A MAJOR PARTY

As we can now see, the war-time schism in the ranks of Liberalism started a great historic party on a downward course from which there has been no turning back. Equally important as a new feature of the political scene was the emergence of Labor as a major party; and a word concerning this development may appropriately be inserted here. Speaking broadly, the Labor party is a product of two chief principles or forces playing upon the broadened electorate created by the reform acts of 1867 and 1884. One of these is trade-unionism, the other is socialism. The one has contributed, mainly, the

funds and the votes; the other, the leadership, the energy, and the spirit. Trade unionism long existed, however, and organized socialism assumed considerable importance, before there was any attempt to weld British workingmen together in a political party, indeed, the British Labor party is a full generation younger than most Continental socialist parties. Occasional workingman candidates were elected to the House of Commons in the later nineteenth century, but usually under the Liberal banner, and although a small Independent Labor party was formed in 1893, it won no seats before 1900. In the last-mentioned year, a new and less socialistic organization known as the Labor Representation Committee began working for a separate labor group at Westminster; and six years afterwards, heartened by the capture of 24 seats, it dropped its modest title and confidently assumed the name of "Labor party," with the "I. L. P." as a closely affiliated unit. From that day forth, there has always been a Labor party in the field. On the eve of the World War, however, the party was still hardly more than an appendage of Liberalism, concentrating its energies mainly upon helping the Liberals with their program of social reform, and having usually not more than 40 or 45 seats in the House of Commons. As a third party, its outlook, in the face of the deeply entrenched bi-party system, did not appear particularly promising.

But war-time conditions changed the situation profoundly. Workingmen grew more class-conscious; the bi-party system collapsed, party ties were everywhere relaxed; Labor leaders like Ramsay MacDonald and Sidney Webb put forth telling appeals; and by 1918 the party, reconstructed under a new constitution, was ready to advance into a new and more impressive stage of its history. The new constitution, indeed, put the party on a far better basis for going ahead. Until now, there had been only a federation of trade unions, socialist societies, and similar organizations, and a person could become a member of the party only by virtue of belonging to one of these constituent groups. Dating from a time when the party was conceived of as for manual workers only, this narrow basis was now discarded and a membership clause adopted which opened a way for any man or woman to join the party simply by becoming identified with a local labor party in a constituency. Also, the new constitution made it clear that "workers by brain" were no less welcome than "workers by hand." In short, a party grounded upon occupational and class distinctions deliberately invested itself with a broadly national character, and while the trade unions continued—as they still do—to form the mainstay of it, their dominance was to some

extent curbed as people from "white collar" walks of life multiplied in the party ranks.[1]

D. THE GENERAL ELECTION OF 1918

Three days after hostilities were suspended on the Western front, a parliamentary dissolution was announced; and in December the people went to the polls at the first general election that the country had known since 1910. War-time conditions joined with the recently enacted electoral law to give the contest many novel features. In particular, the usual party battle was replaced by a trial of strength between a coalition government seeking a fresh lease on life (including a mandate to speak for the nation in the coming peace negotiations) and two opposition parties whose physiognomy would hardly have been recognized by one acquainted only with pre-war politics —the Independent Liberals, bent on resuscitating the historic Liberal party, and Labor, now grown to the stature of a major party and prepared to wage the most vigorous campaign of all. In the Catholic portions of Ireland, the issue lay between the fast declining Nationalists and an entirely new party—Sinn Féin ("Ourselves Alone")—which had sprung up during the War. The former wanted home rule made effective under a statute rushed through Parliament at the beginning of the War, but never as yet put into operation; the latter would have nothing less than full and immediate independence.

There was little room for doubt that the coalition would win, but its margin of victory—478 seats in a new total of 707—exceeded all expectations. The Independent Liberals captured only 28 seats. Labor increased its representation by winning 63. This, however, was far less than had been hoped for, and the casualties included

[1] The antecedents and earlier growth of the Labor party are described in G. D. H. Cole, *Short History of the British Working Class Movement*, 3 vols (New York, 1927), and M. Beer, *History of British Socialism*, 2 vols. (London, 1919–20). For a brief account, see F. A. Ogg, *English Government and Politics*, 545–557. The best history of the labor movement during the World War is P. M Kellogg and A. Gleason, *British Labor and the War* (New York, 1918). Cf. H. W. Lee and E. Archbold, *Social Democracy in Britain* (London, 1936).

The growth of the party, in terms of electoral results, was as follows (to the schism of 1931):

Year of General Election	Seats Contested by Labor Candidates	Popular Vote Polled	Seats Won
1906	50	323,195	29
1910 (Jan)	78	505,690	40
1910 (Dec)	56	370,802	42
1918	361	2,224,945	57
1922	414	4,236,733	142
1923	427	4,348,379	191
1924	514	5,487,620	151
1929	590	8,292,000	289

Ramsay MacDonald and most of the other outstanding party figures. Southern and central Ireland were swept by the Sinn Féiners.

3. PARTY HISTORY SINCE 1918:

A. THE END OF COALITION

Englishmen did not relish coalition government, but as matters stood at the existing juncture there was no alternative to going on with it. To be sure, the country had so far "gone Unionist" in the election that the party nominally headed by Bonar Law found itself with 53 more adherents in the new House of Commons than all other parties combined. Every one of these members, however, had been elected as a supporter of the coalition; and although Conservatives thenceforth preponderated heavily not only at Westminster but at Whitehall, the combination government, with a Liberal in first place, set out in the closing days of 1918 to extricate the country from war and to solve the almost equally difficult problems of a restored peace. No one who lived through the period will need to be told that Mr. Lloyd George and his associates found the going difficult. From brief post-war prosperity, the nation was plunged into social and economic distress. Trade languished; unemployment mounted, grudging deviation (under a Safeguarding of Industries Act) from the traditional free trade policy failed to yield important results. A government which opposition forces from the outside could not seriously menace gradually weakened under internal differences, and in October, 1922, with Parliament dissolved and a general election at hand, the Conservatives—conscious of their superior strength, and weary of domination by a prime minister who after all was not one of themselves, decided to go into the campaign as an independent party. Left high and dry, the Lloyd George cabinet resigned, the Conservative leader, Bonar Law, formed a ministry, and for the first time since 1915 the country found itself with a government organized on the traditional party lines. The election that followed yielded the Conservatives, on a platform of "tranquillity and stability," 344 seats, or considerably more than the quotas of the Liberals and Labor combined.[1]

B. EFFORTS TO REHABILITATE THE LIBERAL PARTY

Meanwhile, efforts were being made to bring together the warring segments of the Liberal party with a view to recovering something of the front-rank position enjoyed in pre-war days There were plenty of obstacles. An earlier proposal, in which Mr.

[1] This was the first election in which the portions of Ireland included in the Free State (present Eire) did not participate. The House of Commons had now been reduced to a membership of 615.

Lloyd George himself was interested, to build the coalition into a permanent "center" party had failed. But between the two wings of Liberalism—now functioning as two quite separate parties—and especially between their leaders, Asquith and Lloyd George, there was deep disagreement; in addition, moderate Liberals were gravitating into the Conservative ranks and more radical ones into the fold of Labor. People were saying that the historic Liberal party had had its day, that its work was done; and not a few Liberals, or ex-Liberals, seemed themselves to be of this opinion. Nevertheless, the coalition once broken up and the Lloyd George following left without anchorage, the chances for a reunion of the party were considerably improved. The election of 1922 failed to bring it about; but when, in the following year, Mr. Baldwin—who in the meantime had succeeded Mr. Law as Conservative leader and prime minister—unexpectedly precipitated a general election with a view to securing a national mandate in behalf of a program of protective tariffs, the opportunity to rally to the defense of the historic Liberal principle of free trade turned the trick, and seven dreary years of schism were brought (at all events outwardly) to an end. Asquith and Lloyd George became reconciled; the two Liberal parties merged into one. Against great odds—internal dissension which sometimes amounted to renewed schism, the powerful pull of Labor, and an electoral system which undoubtedly works to the Liberals' disadvantage—able and ambitious younger Liberals labored for a decade to bring back the party to its old position, with a certain amount of success so far as popular support went, though with little or none when measured in terms of votes at Westminster. In 1931, as we shall see, the party again broke into fragments, which have never been reassembled.

C. LABOR'S RISE TO POWER

A third major development of the initial post-war decade, and easily the one of most far-reaching consequences, was the steady advance of the reorganized Labor party, culminating in 1924 in the formation of the first Labor ministry. Emerging from the election of 1918 with more seats in the House of Commons than any other non-coalition party, Labor in 1922 polled within a million and a quarter of as many popular votes as the victorious Conservatives, raised its quota of seats from 76 to 142, and took undisputed possession of the Front Opposition Bench in the House of Commons.[1] In the election of 1923, the Conservatives polled more popular votes than the year before, and the united Liberals more than the two Liberal parties on the previous

[1] Between 1918 and 1922, the party had been obliged to share the Bench with the Independent Liberals.

occasion. Labor did quite as well. But the votes were so differently distributed in the constituencies that while the Liberals came off with 45 more seats and Labor with 49 more, the Conservatives suffered a loss of 86. No party had a majority. The Conservatives had a decided plurality. But they had gone to the country with a program on which they had been beaten, and if party government meant anything at all, they were due to surrender the reins. There was talk of an attempt at Conservative government by minority, also of a return to coalition. But neither proposal struck fire, and to the consternation of many shuddering Englishmen, the Laborites —having 32 more seats than the Liberals—were invited to take the helm.

D. THE FIRST LABOR GOVERNMENT (1924)

In point of fact, neither of the older parties coveted the thankless task of handling the country's affairs as they then stood, and after recovering from its initial nervousness the nation showed itself willing to give the new government a fair chance. On top of domestic and international difficulties which had baffled previous ministries, there were plenty of other handicaps to be overcome. Most serious of all was the fact that the new ministry commanded no majority in the House of Commons and could remain in office only so long as a goodly number of Liberals—bound by no formal alliance, but only by a general understanding—should prove willing to lend the aid of their votes.[1] Prime Minister MacDonald was, however, a leader of indefatigable industry and of more than ordinary ability, his ministry, if inexperienced, contained a good deal of talent, and a fair record was achieved, particularly in the domain of foreign relations. Recognizing that, as situated, it could do little toward effectuating the party slogan of "socialism in our time," and motivated by the new sense of responsibility that inevitably goes with holding office, the government quietly discarded radical ideas such as the oft-proposed levy upon private capital as a means of liquidating the burden imposed by the War, and devoted itself to policies which, in the main, might, under similar conditions, have been pursued by either of the other parties. At one critical point, however, it incurred deep suspicion, namely, in respect to its tolerance toward communism; and when, after some nine months in office, it saw fit to drop a case against an acting editor of the communist *Workers' Weekly*, a storm of disapprobation broke over its head. On a motion in the House of Commons to appoint a committee

[1] The situation was now the reverse of that existing before the War when Mr. Asquith's Liberal government was dependent on the support of Labor.

of inquiry, the government—left in the lurch by the Liberals—was defeated; and for the third time in two years Parliament was dissolved and the voters called to the polls. The results were decisive enough to satisfy the most ardent advocate of straight party government. Although increasing its popular vote by a million, Labor—painted by the Conservatives as pro-bolshevist—suffered a net loss of 42 seats; the Liberal popular vote was cut almost in half; and the Conservatives, with not far short of a majority of the popular vote, and with a parliamentary majority of 104, returned to full control. Labor's set-back was not considered fatal, but on all sides the Liberal *débâcle* was interpreted as portending the early disappearance of the party.

E. FIVE YEARS OF CONSERVATIVE RULE (1924–29)

Upwards of five years now passed without another general election. During the whole of the period, Mr. Baldwin's Conservative government, backed by all of the votes that it needed in both houses at Westminster, was in a position to pursue its policies with as free a hand as the distracting economic situation permitted. The times were indeed difficult, and the record achieved—much too lengthy to be reviewed here—was uneven. The most sensational event was an attempted general strike of union labor in 1926, and the outstanding piece of legislation was the Trade Disputes and Trade Unions Act of 1927, which, as pointed out elsewhere,[1] dealt organized labor, and in particular the Labor party, a body blow. Inability to cope with the economic situation gradually wore down the ministry's prestige; foreign policies, too, were not notably successful. Nevertheless, the government plodded on; and only when the constitutional mandate of Parliament was drawing to a close did the cabinet fix May 30, 1929, as the date for another general election.

In a contest in which three-cornered fights were the rule rather than the exception, and only seven candidates were unopposed, the Conservative hold was broken no less completely than unexpectedly: from 400, the party's quota of seats fell to 269. The Liberals came back with a popular vote more than double that of 1924, although with a net gain of only 12 seats. Labor rose from the depths to achieve the greatest triumph in its history. Pulling up its popular vote to within a quarter of a million of the still huge Conservative total (8,658,918), it garnered 289 seats—not a majority, to be sure, but only 19 short of it. Clearly repudiated by the electorate, two-thirds of which had voted against it, the Baldwin government forth-

[1] See p. 135 above.

with resigned, and a second Labor ministry took the reins, with MacDonald once more prime minister.

F. THE SECOND LABOR GOVERNMENT (1929-31)

Lacking a parliamentary majority (even though narrowly), the new government's position was, as in 1924, precarious. This time, however, the party leaders had the benefit of actual experience in office; the nation had come to see that no very radical steps were likely to be taken; the voters did not want another election soon; and although, as before, the Liberals held the balance of power, enough of them seemed likely to prove dependable to enable the ministry to survive for at least the two-year period which MacDonald at the outset predicted for it. Once again, a Labor government won its principal successes in the domain of foreign and imperial affairs; difficult as were the nation's problems in that field, they were not quite so insuperable as those of a domestic character. Hardly was the ministry in office before it found itself embarrassed by widespread industrial disorders; and although it contributed a good deal to the settlement of various strikes, its principal electoral pledge—to relieve unemployment—went almost entirely unfulfilled. Even the solemnly promised revision of the Trade Disputes and Trade Unions Act of 1927 proved impracticable. To difficulties from other sources was added growing dissension in the party ranks. Whatever they had once been, MacDonald, Snowden, Thomas, and other government leaders had, under the sobering influence of official responsibility, become, in effect, middle-class, Gladstonian liberals, and with them stood a small right wing of the rank and file. Opposed was a left-wing majority, bent upon drastic socializing measures and impatient of delay. To Prime Minister MacDonald's virtual resignation from the Independent Labor party in 1930, that radical element retorted by dramatically seceding from the major party in the following year. Only a situation bringing the disagreement to a head was needed to precipitate an explosion.

G. THE "NATIONAL" GOVERNMENT AND THE ELECTION OF 1931

When the crash came, it not only rent the Labor party asunder, but unexpectedly gave the nation another coalition ministry, even though disguised under the description of an all-party "government of cooperation." The situation producing it arose out of a financial crisis threatening disaster unless confidence was restored by a prompt balancing of the national budget. A committee of experts recommended that this necessary object be attained, not by increasing taxes, but by reducing expenditures—including curtailment of payments (part insurance, part relief) to

the unemployed; and when Mr. MacDonald found a majority of his cabinet unwilling to go along with him in such a course, he took the bold step of handing in the resignation of all the ministers, including some who did not even know that the thing was going to be done. Inviting him to make up a new ministry, the king—so it is understood—advised that it be constructed on a "national" basis, with representation for all parties willing to lend support.[1] The upshot was a cabinet of 10 members (instead of the usual 19 or 20)—four Laborites, four Conservatives, and two Liberals—with the remaining 54 ministers drawn almost entirely from Conservative and Liberal ranks. And so complete was the break between the former leader and his party that when the new cabinet almost at once came up for a vote of confidence, the Conservative and Liberal contingents in the House joined unanimously in extending it, while every Labor member save 12 was recorded in the negative. Every Labor minister, indeed, who had chosen to stand by his chieftain was, along with him, expelled from the party.

Having procured from Parliament a remarkable statute, on wartime lines, empowering the government to introduce budget-balancing economies by order-in-council instead of by action of the two houses, and having further obtained the passage of a comprehensive emergency finance bill, the cabinet, in October, gave the country an opportunity at a general election to approve what had been done and also to confer a "blank-check" mandate for the future. Candidates who supported the then existing government ran as Conservatives, National Liberals, or National Laborites; those who opposed it, simply as Liberals or Labor men; and the country was treated to the novel spectacle of persons like Ramsay MacDonald and Philip Snowden solemnly prophesying disaster if the Labor party came off victorious. The parties supporting the government largely refrained from putting up candidates against one another, with the result that three-cornered contests dropped to the smallest figure in many years; in two-thirds of the constituencies, the fight was simply between a Nationalist candidate and a Laborite. The results were so extraordinary as to approach the grotesque. Out of a total of 615 seats, the Nationalists won 556, giving them the largest majority at Westminster ever enjoyed by any government. Although polling only some 1,750,000 fewer popular votes than in 1929, Labor saw its quota of seats cut from 263 before dissolution to 52—once more a record-breaking overturn. Of Liberals of all stripes, there were now 72, as compared with 58 at dissolution. But of these, 68 were

[1] A. B Keith, *The King and the Imperial Crown*, 130–138.

enlisted under the Nationalist banner, with only four maintaining an independent position. To the vast Nationalist total, the Conservatives contributed 471 seats—which meant that they alone commanded an absolute majority of 163 in the new House.[1]

H. FOUR YEARS OF DISGUISED CONSERVATIVE GOVERNMENT (1931–35)

In view of this situation, Mr. Baldwin, as Conservative leader, might have been expected to emerge as prime minister. To be sure, he eventually did so—but not until 1935; and in the meantime, for three and a half years, the Conservatives were again found holding a heavy majority of parliamentary seats while nevertheless subjecting themselves to alien leadership in Downing Street. Once more, too, Mr. MacDonald was prime minister by sufferance of a party not his own. On two earlier occasions, he had held office by leave of the Liberals, now, even more truly than during the period of the first National government in 1931, it was to be by leave of the Conservatives. Even Mr. MacDonald could hardly expect, however, to be prime minister with no party of his own at his back without paying a price. Surrounded by a reconstructed cabinet of 20 in which there were 11 Conservatives, 7 Liberals (of different stripes), and only one National Laborite (besides himself), and at the mercy at all times of Mr. Baldwin and the staggering Conservative majority in Parliament, he became virtually a Conservative prisoner and ended not only by being overshadowed by the Conservative leader, but by being obliged to throw his old principles overboard wholesale. Under such circumstances, the prime ministership fell to the lowest level known in a hundred years, with little prospect of revival until, in the early summer of 1935, Mr. MacDonald, partly for reasons of health, stepped aside and theory was squared with fact through acceptance of the post by Mr. Baldwin.[2]

Partly because of the government's measures, partly (perhaps chiefly) as a result of other factors, the country's economic situation by this time gave signs of pronounced improvement. Meanwhile, however, there had come to the fore the inevitable question of how long a government originally set up merely to deal with an emergency which had now passed, and resting on so abnormal and unreal a basis, was to continue. Experience with the Lloyd George

[1] For a penetrating contemporary analysis of the election, the crisis that produced it, and the problems raised by the entire experience, see H J Laski, *The Crisis and the Constitution; 1931 and After* (London, 1932) Cf. R Muir, *The Record of the National Government* (London, 1936), Chaps I–II

[2] L. M Weir, *The Tragedy of Ramsay MacDonald; A Political Biography* (London, 1938).

war-time coalition suggested that a government of this nature is likely to cling to office no less resolutely than does a straight party government; and any surviving doubt on the subject was dispelled toward the end of 1933 when not only Prime Minister MacDonald but leaders of other elements in the combination, abandoning pledges previously given, frankly announced the cabinet's intention to go on to the time of the next election, and indeed, when that time should arrive, to seek a fresh lease on life, as a means—so it was alleged—of saving the country from the danger of a Labor dictatorship. Under the five-year rule, Parliament's mandate was legally good until the autumn of 1936. From the moment, however, when Mr. Baldwin took over the prime-ministership, it was manifest that the government would "go to the country" at an earlier date; and in point of fact, the election was held shortly—in November, 1935. The time was favorable, not only because the Labor party was suffering from dissension over questions of leadership and policy, but because the government was at a high point of popularity by reason of its course (stronger then than afterwards) in the international situation produced by Italy's war upon Ethiopia. The object was, of course, not a greater majority in Parliament, but a new mandate for years that lay ahead.

I. THE ELECTION OF 1935; DISGUISED CONSERVATIVE RULE CONTINUES

As the National government went into the campaign, it was—though masquerading as non-partisan—more truly a Conservative government than ever before. In the cabinet were now 16 Conservatives, 3 National Liberals, and 3 National Laborites; and the nominal, as well as actual, chief was a Conservative. The Conservatives put up candidates for all seats except some 50, which they by agreement left to be contested by their Liberal and Labor allies. The Labor party contested 527, and the total number of candidates nominated was 1,345, including 65 women.[1] Only 38 members were returned without a contest.

The campaign proved one of the dullest on record—especially as compared with those of 1924 and 1931. To an unusual degree, indeed, it was a contest without an issue. First and last, the government sought to focus popular attention upon its handling of the Italo-Ethiopian affair—upon which, however, there was no fundamental disagreement among the parties, while upon other potential issues battle was never squarely joined. That the coalition forces would win decisively was taken for granted, the only matter of genuine interest being the extent to which Labor would be able to

[1] "Three-cornered" contests numbered 147

"come back." In the outcome, government candidates won 431 seats. Not only so, but of these, 387 went to Conservatives, who, having a clear majority quite apart from their allies, could, if they had chosen, have made up a ministry entirely of their own. They had no disposition to do this; but it was a foregone conclusion not only that the existing ministry would continue to be dominated by them, but that theirs would be the policies to be pursued in at least the nearer future. Winning 154 seats, Labor more than doubled its previous quota, which—although a better showing had been predicted—was probably all that should have been expected Liberalism suffered its usual humiliation. The wing supporting the government held its own reasonably well (33 seats), but the groups in opposition fell to something like half of their former strength (21 seats).

Since 1935, the Conservatives—in point of fact, considerably liberalized since 1931—have been in power in every respect except in name. In 1937, the country gentleman, Stanley Baldwin, was succeeded as prime minister by the business man, Neville Chamberlain, but neither this change nor a considerable reconstruction of the ministry which attended it altered the coalition basis of the government or produced any marked departures in the broad lines of policy. A crisis arising from the abdication of King Edward VIII early in 1937 stirred the nation to its depths, but left no definite impress upon the parties, all of which actively or passively supported Mr. Baldwin's handling of the affair. With the rest of the world arming feverishly, the government centered its plans and efforts upon rearmament, meanwhile devoting itself, on lines regarded by many as stultifying, to the supreme objective of preventing a general war from breaking out on the Continent. Labor continued in the rôle of the opposition, devoting itself particularly to a "unity" campaign aimed at allaying internal strife and building strength for the next general election. Crushed between the upper and nether millstones of Conservatism and Labor, Liberalism kept up its effort to achieve recovery, but (notwithstanding adoption of a new scheme of organization by the opposition wing in 1936) with little show of success Except probably for a few tenacious segments in Wales and other restricted areas, the party seems definitely doomed to pass out of the political picture. A movement promoted chiefly by the socialist writer, G D H. Cole, and envisaging the formation of a "popular," or "people's," front that should sweep together under one banner all who were prepared to accept "a democratic and progressive immediate program" as a means of avert-

ing war and world catastrophe, for a period attracted considerable attention. Frowned upon, however, by even the Labor party, the project failed to make headway.[1]

[The outbreak of war with Germany in September, 1939, promised to open a new chapter in British party history—whether one as momentous as that precipitated by the World War of 1914–18, time alone could tell. The situation differed from that of 25 years earlier in that the existing ministry (while completely dominated by Conservatives) was already, to a degree, a combination or coalition. Invited forthwith by Prime Minister Chamberlain to accept representation in a reconstructed and enlarged ministry, the opposition Labor and Liberal parties declined, explaining that in their opinion they could render more effective service by "staying outside of the government at this time." When these pages went to press, these opposition elements were giving wholehearted coöperation, and were expected to continue to do so. Meanwhile, a number of new ministries (some of them slightly antedating the actual beginning of hostilities) made their appearance; men of the prominence of Winston Churchill and Anthony Eden were placed in strategic posts; and an inner ministerial circle, or "war cabinet," of nine members was created to assume supreme direction of the nation's war effort. Growing speculation concerning the time when a parliament whose mandate would expire in the autumn of 1940 would be dissolved and a general election held was, of course, terminated abruptly.]

[1] On this proposed "popular front," see G. D. H. Cole, *The People's Front* (London, 1937), and articles in the *Polit. Quar.*, Oct.–Dec., 1936; on the Labor party's recent status, C. R. Attlee (former leader), *The Labour Party in Perspective* (London, 1937), and A. L. Rowse, "The Present and Immediate Future of the Labour Party," *Polit. Quar.*, Jan.–Mar., 1938. A sharp indictment of the National government's policies in both domestic and foreign affairs will be found in R. Muir, *The Record of the National Government* (London, 1936).

CHAPTER XVI

The Parties Today

FROM even so brief an outline as the foregoing, it is manifest that a picture of English parties painted in 1914 would in no wise hold for the situation existing today. Seven war and post-war years of coalition government shattered party ties, shifted party leadership, dissipated party morale; millions of voters crossed over more or less permanently from one party to another; a major party which had been one of the mainstays of the old political order went on the rocks; a party which as late as 1910 could poll barely 400,000 popular votes and capture only a sixteenth of the seats in the House of Commons found itself in 1924, and again in 1929, ensconced in the places of power in Whitehall. Before turning to the important matter of party machinery and activities, it will be well to bring somewhat more clearly into view the party scene that has resulted from these changes, both as to the position of the parties individually and as to the outlook for the party system as a whole.

SOME PRELIMINARY OBSERVATIONS

It will be useful to start with a few general observations. 1. Party names are not to be taken too literally; often as not, they mean but little. In the United States, Republicans are no more devoted to a "republican" form of government than are Democrats, and Democrats have no monopoly of belief in "democracy." So it is in Great Britain with "Conservative" and "Liberal." The terms themselves are only relative, what seems conservative to one man seems liberal to another, and what appears conservative today may appear liberal tomorrow. As applied to parties, the terms are even more deceptive. On more than one occasion the Conservative party has taken a more advanced position on a public issue than has its historic opponent, and could rightly claim to be the party of reform and progress. It was the Conservatives, for example, who placed the Reform Act of 1867 on the statute-book, it was they, too, who enacted the long overdue measure of 1888 reconstructing and democratizing an antiquated system of county government. 2. Aside from extreme groups like the Fascists and Communists, all parties have much in common,

accepting and supporting the same constitutional order, cherishing up to a point the same social ideals, and differing upon many matters only in degree and emphasis rather than in more fundamental ways. Many statutes are enacted and acts of government performed without reference to party; nearly all of the greatest legislative measures of the nineteenth and twentieth centuries were carried, on a basis of compromise, by the coöperation of all of the major parties of the day, sometimes even at the cost of schism in one of the number. 3. Parties are far less homogeneous than is sometimes supposed. Formed of elements drawn from widely diverse sources, socially and otherwise, they are not solid and permanent blocks of unswerving adherents, but rather loose aggregations of "right wings," "left wings," "centers," with border-line supporters liable at any time to falter in their allegiance, and with individuals, and even groups, all the while changing from one banner to another. Moreover, this gradation from a party's extreme right to its extreme left is complicated and blurred by innumerable cross-currents related to particular issues. So wide is the range of human opinion that if there are to be only two or three main parties, each of them must embrace people of decidedly different antecedents, interests, purposes, and views. 4. Parties, at all events in a democracy, are not static, but always in a condition of flux, meeting and adapting themselves—if they are to live—to new situations as they arise. The historian Macaulay compared the relations between the Liberals and Conservatives in England to those between the fore and hind feet of a stag, both equally necessary, and the hind feet always arriving at the place where the fore feet had been. The figure is, however, faulty, because not only have both parties progressively occupied new ground from decade to decade, but the two have at times passed and repassed each other. The most that one can say is that both have constantly been in motion, and in the same general direction, *i.e*, toward the left, which—aside from backward swings encountered on the Continent under dictatorial régimes—is the universal tendency in modern politics. 5. Party leadership almost invariably falls to the moderate elements of the center. Perhaps a more accurate way of putting it is that, whether or not from choice, successful leaders must of necessity assume and maintain a moderate position, a Stanley Baldwin must stand nearer to Labor than do the reactionary "die-hards" in his party; a Ramsay MacDonald must be more conservative than his radical Clydeside followers.[1] From both right and

[1] To be sure, Mr. MacDonald overplayed the rôle and became so conservative that his party forsook him. See pp. 283–284 above.

left wings, the leader will be bombarded with criticism; but only from a middle position can he, as a rule, draw together and harness a maximum of party tolerance and support.

CONSERVATIVES AND LIBERALS BEFORE 1914:

1. DIFFERENCES OF PRINCIPLE

Thirty years ago, the Irish Nationalists, bent primarily upon winning home rule for a dissatisfied people, formed a minor party of considerable importance, with a following naturally localized in the southern and central portions of the disaffected island; and the newly risen Labor party had a certain amount of strength in the industrial centers of England and Wales. Outside of this, however, the people of the United Kingdom who took any part in political life were almost all identified with one or the other of the two great historic parties, Conservative and Liberal. It is not inconsistent with the comment made above to say that there were significant differences between the two parties. The general viewpoint of the one was that of the man who has great respect for tradition, believing it the necessary anchorage of a sound social order, so that changes ought to be made only cautiously, gradually, and after the need has been fully demonstrated—the point of view, too, of the man who accepts great vested rights and interests as part of the natural order of things and would go to any reasonable length to protect them. The Liberal viewpoint was rather that of the man who, less wedded to tradition and not so much concerned about vested rights, especially of a property character, would give more scope to the consideration of human and social interests. Concretely, the Conservatives habitually championed the prerogatives of the crown, the independence of the House of Lords, the privileged position of the Anglican Church, the interests of the landholders, the well-being of "big business" (including especially the liquor trade), the freedom of private property from state interference, national unity and strength, and the preservation of the Empire. To a greater extent, the Liberals concerned themselves about the needs of small-scale agriculture and business, the promotion of industry, the betterment of the lot of the industrial worker, the interests of the consumer, and larger rights for peoples within the Empire, including home rule for Ireland Liberalism had swung farther back in the direction of the old mercantilist concepts and now stood for extensive state regulation in economic and social matters—except only that it still uncompromisingly flew the banner of free trade in a period when the Conservatives were gradually becoming infected with the idea of a revived protectionism.

2. DISTRIBUTION OF PARTY FOLLOWINGS:

A. SOCIALLY

Social and geographical distribution of party followings clearly reflected these differences of principle. In the Conservative ranks were found decidedly the larger part of the people of title, wealth, and social position—in other words, the aristocracy; [1] almost all of the clergy of the Anglican Church, and some of the Nonconformists, especially Wesleyans; a majority of the graduates of the universities, and of members of the bar; most of the prosperous merchants, manufacturers, and financiers; a majority of clerks; approximately half of the tradesmen and shopkeepers; and a goodly proportion of the small landholders, and especially of the agricultural laborers. In the Liberal party were found, on the other hand, a goodly share of the professional and commercial elements, considerably more than half of what may be termed broadly the middle class, especially in the towns (but omitting clerks and other employees living on small fixed incomes), decidedly more than half of the Nonconformists, most of the mining population, and probably a good deal more than half of the industrial workers in towns and cities, although both miners and urban workingmen were being drawn off in increasing numbers by Labor.

B. GEOGRAPHICALLY

Although less localized than the minor parties, the major parties, too, were decidedly stronger in some parts of the country than in others. Scotland was overwhelmingly Liberal. Half of its counties and boroughs invariably returned Liberals to the House of Commons; a third more were predominantly Liberal; three or four counties were politically doubtful; not more than that number were predominantly Conservative. The situation in Wales was practically the same, except that the Liberal preponderance was even more marked. On the other hand, England presented the aspect of a predominantly Conservative, or at all events Conservative and doubtful, stretch of country, generously spotted over with Liberal areas, especially in the north and the Midlands. The Conservative strongholds lay most largely in the south and east. From Chester and Nottingham to the English Channel, and from Wales to the North Sea—this was the greatest single area of Conservative strength, aside from a half-dozen Protestant counties in the Irish province of Ulster. From Oxford and Hertford southwards past London to the Channel, there was not a county

[1] This had not always been true. At one time, the Liberal party contained a powerful element descended from the Whig aristocracy of the eighteenth century. Nearly all of this portion (never completely fused with the middle- and lower-class elements brought in by the nineteenth-century reform acts) was, however, drawn off permanently by the secession of 1886. See p. 273 above.

in which the Conservatives were ever in serious danger of being outvoted.[1]

In general, those regions in which the people were engaged mainly in manufacturing and mining were Liberal, those in which they were engaged in agriculture were Conservative, and among agricultural districts, it was the most fertile and best favored, such as Kent, that were most heavily Conservative. Regions in which small landholders abounded were likely to be Liberal. Scotland was Liberal because of the traditional dislike of landlordism, the strong sense of independence and the sturdy democracy of the middle and working classes, the absence of the Anglican Church as an established church, and the weakness of the peerage in both numbers and influence. Wales was Liberal because of the preponderance of industry and mining, the scarcity of great landed estates, the radical temperament bred by an austere mode of life, and the strength of Nonconformism.

THE PARTIES TODAY: So much for parties as they existed prior to the dislocation associated with the World War. What of their respective positions and characteristics at the present day?

1. CONSERVATIVE The results of recent elections seem to indicate that the Conservative party holds the allegiance of a greater proportion of the electorate than does any of its rivals; and, in general, the same sections of society and the same interests adhere to the party as in earlier times. Here and there, to be sure, the Liberals capture a rural seat, and Labor has begun to organize, and occasionally to win, in rural constituencies. Speaking broadly, however, the Conservative hold upon the rural portions of the country, especially in southern England, has never been broken During the past 25 years, too, there have been large accessions from Liberalism through the adhesion of people who gravitated over during the war-time coalition, of others who, unable to see any future for the historic Liberal party, embraced Conservatism as a bulwark against socialism, and of still others who aspired to political careers and considered that, as matters stood, their only chance lay with the Conservatives. Many of these recruits have come from what may be termed broadly the middle class, especially in the towns, even more, proportionally, have been drawn from such wealth, leisure,

[1] See E Krehbiel, "Geographic Influences in British Elections," *Geog. Rev*, Dec, 1916 A map which accompanies this article shows in colors the distribution of party strength on the basis of composite returns for the eight parliamentary elections between 1885 and December, 1910

and fashion as latter-day Liberalism could boast. For many a day to come, the Conservatives should be able to go into a general election with upwards of 100 seats (chiefly rural) in their pockets,[1] and with assurance that if they do not suffer downright disaster in the boroughs—as they did in 1929—they have nothing to fear.

The party, however, displays plenty of internal differences, and at least three main elements or groups can be distinguished. On the right are the ultra-conservative "die-hards"; on the left, the "Young Conservatives"; between the two, the "center," numerically more imposing. Steeped in the philosophy of Edmund Burke, the die-hards take, in general, a pre-1911 view of the constitution, uphold the existing political and economic order against practically all proposals for change, believe in a stiff protectionist policy, and almost invariably react as nationalists and imperialists. Composed of people who have been liberated from the spell of *laissez-faire*, and who believe change both inevitable and desirable, the left wing, on the other hand, approaches at many points the position of Labor, with, however, the significant difference that whereas Labor has a socialist bent toward doing away with private capital, the Young Conservatives would retain it and merely subject it to a larger amount of state control. Reorganization, public regulation, development of social services—these are well within the left-wing purview, and quite in line, it may be added, with the essentially liberal outlook which the party maintained in more than one earlier stage of its history. With the die-hards acting as a brake and the Young Conservatives as an accelerator, the great central body of the party becomes what a center group usually is, *i.e.*, a sound but rather uninspiring and opportunistic instrumentality for getting things done. One should hasten to add, however, that, allowing for periods of recession, the trend is, on the whole, toward progressivism.[2] Historically, the party has never been reactionary except during brief intervals; all of its greater leaders have, in their way, been reformers, since 1931, it has been responsible for a good deal of advanced social legislation. From an extreme Labor viewpoint, Conservatism may appear to have "nothing to do or create," but "everything to prevent." One thing above all others it undoubtedly is bent upon preventing, *i.e.*, the surrender of the country to socialism. Whenever that becomes the issue, the ranks instinctively close. But the party's record, make-up,

[1] Very much as the Democratic party in the United States goes into a presidential election with a substantial block of electoral votes assured in the "Solid South."

[2] In these dark days of their own party, Liberals have been known to take some melancholy pride in reflecting that "most Conservatives are Liberals now."

and leadership forbid denying to it the quality of constructive, even if cautious, statesmanship.[1]

2. LIBERAL

Cursed with more serious and persistent conflicts of personalities than any other party, and victim of an electoral system which stacks the cards against any intermediate party or group, the Liberal party has known no true unity since 1916; and its situation is probably worse today than at any previous time in its history. Reunited in name (though not in spirit) in 1923, it again split wide open in 1931; and from thence to the present it has existed only in the form of factions, which war upon each other almost as spiritedly as upon the common enemy. To be sure, in the last parliamentary election carried out under normal party conditions (that of 1929), Liberal candidates polled the very respectable total of 5,300,000 popular votes. To be sure, too, the faction which most truly preserves the party tradition, retains the bulk of popular support, and keeps up the time-honored machinery, *i e.*, the "Opposition Liberals," has decidedly more strength and unity than the pitiful quota of 21 seats won in the 1935 election would suggest. The future, however, holds no great promise. People of more moderate views continue to drift into the Conservative party, those more radically inclined go over to Labor. As late as 1922, Liberalism was represented on the election map by sizable, though scattered, areas in all major parts of England except the southeast, in Wales, by practically the whole of the country except for Labor splotches in the northwest and extreme south; and in Scotland, by all except a fifth or sixth of the country, *i e*, the region, in general, between the Firth of Forth and the Firth of Clyde, which was shared by Conservatism and Labor. In 1935—if the element supporting the decidedly non-Liberal Nationalist government be left out of account—only a few scattered dots remained to indicate that the once proud party still existed.

In matters of creed, the chief distinction left to that wing of the party most worthy of being regarded as heir to the traditions of the past is its emphasis upon the importance of the individual in comparison with the state, its belief in a government dominated by the upper middle class, its devotion to capitalism, tempered with a strong sense of social obligation; and its insistence upon public regulation

[1] On "the Conservative task," see F. J. C Hearnshaw, *Conservatism in England*, Chap xx. In his introduction, the author laments a certain inarticulateness of Conservatism in respect to its principles and policies. Cf W. Elliot, *Toryism and the Twentieth Century* (London, 1927), R Loftus, *The Creed of a Tory* (London, 1926), W J. Wilkinson, *Tory Democracy* (New York, 1925), L Rockow, "The Political Ideas of Contemporary Tory Democracy," *Amer. Polit Sci Rev.*, Feb, 1927.

as an alternative to the Labor policy of nationalization. At a time when the country, under Conservative leadership, has swung back to protectionism (since 1932), the party adheres unswervingly to free trade. And it favors military preparedness, advocates more efficient use of the land through a system of small holdings and allotments, favors sundry measures for social amelioration, and calls for economy in public expenditures.[1] Except on tariffs, however, there is little in the program that does not find a place among either Conservative or Labor proposals; and the country has failed to be stirred by it.[2]

3. LABOR

Next to the Conservative party in popular favor stands Labor. To be sure, a party which in 1929 won 288 parliamentary seats and in 1931 only 52 might have been supposed to be on the road to extinction. But even in the last-mentioned year, a popular vote of nearly seven millions was polled, and in 1935 recovery in the constituencies was more than matched by gains at Westminster. Neither Labor nor any other major British party has ever been strictly a class party. As pointed out in the preceding chapter, Labor's earlier social basis has been greatly broadened in the last two decades; and although manual workers—especially in factories and mines—still preponderate heavily, as no doubt they will always do, the party rolls now contain the names of as diverse and representative a lot of people as have ever been drawn together in any other British party. Speaking broadly, and without regard to the ups and downs experienced at particular elections, Labor's primary strength is in the coal fields, the manufacturing regions of southern Scotland, the north and Midlands of England, and south Wales.[3]

Only since Labor appeared upon the scene have party creeds in England really differed in fundamentals; Conservatives and Liberals always took much the same view of the social order and its implications, differing mainly upon secondary questions of emphasis and method. Labor injected a body of thought and a program of objectives which gave the voter a chance to say whether he wanted

[1] These and other features of the Liberal program are set forth in a statement of policy issued in 1934 by the National Liberal Federation under the title, *The Liberal Way*.

[2] Useful literature relating to the Liberal party includes H. L. Nathan and H. H. Williams (eds.), *Liberal Points of View* (London, 1927), and *Liberalism and Some Problems of the Day* (London, 1929); H. Phillips, *The Liberal Outlook* (London, 1929), F. K. Griffith, "The Liberal Appeal," *Polit. Quar.*, Apr.–June, 1935.

[3] The geographical distribution of Labor's representation on the basis of general elections from 1918 to 1931, inclusive, is tabulated by A. W. Macmahon in *Amer. Polit. Sci. Rev.*, Apr., 1932, pp. 340–341.

the time-honored capitalist system perpetuated or a basically different régime put in its place. The new order proposed by Labor is the socialist state, in which private ownership in key industries, such as transportation and mining, would be supplanted by public ownership and government management, other industries would be regulated drastically, wealth would be redistributed, social services vastly extended, and group control widely substituted for individual action —all, however, by strictly constitutional methods. With industrial reorganization would go also political reconstruction—abolition of the House of Lords; suppression of plural voting; erection alongside the House of Commons, or *political* parliament, of a popularly chosen *social* parliament with full control over taxation, education, poor relief, industrial relations, and other economic and social activities; decentralization of government in the interest of fuller and freer local self-government, and a variety of other changes.[1] To be sure, the party, as already indicated, would usher in the socialist state by orderly and peaceful methods, and with due compensation rendered to individuals and corporations whose property was taken over. To be sure, too, some of the more radical proposals heard earlier, *e.g.*, the capital levy, have been quietly dropped. Even before the socialist goal should be fully reached, however, there would be wholesale extensions of public ownership and huge readjustments of tax burdens; and the goal itself, if actually arrived at, would be a régime in which private property would play only a restricted rôle.

But the ranks of Labor are no more free from cleavages than are those of the other parties. From far back, there has been sharp disagreement between adherents of the party who insisted upon a policy of quick action—"socialism in our time"—and others of more patient disposition who were prepared to rely upon the "inevitability of gradualism." The fall of the Labor government in 1931, indeed, with the ensuing open break in party ranks, grew directly out of this difference upon the question of procedure.[2] As viewed by its radical critics, the MacDonald government had no disposition to press for

[1] This political program has not been formally announced by the party, but it is set forth in a notable book by two eminent Labor intellectuals—*A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), by Sidney and Beatrice Webb—and is commonly regarded as embodying the policies which the party would follow if once endowed with sufficient power.

[2] As pointed out elsewhere, it was now that the Independent Labor party (long —in spite of its name—a small but powerful unit within the major party) severed its connection, on the ground that the latter was not sufficiently vigorous in its fight for socialism. In later days, the "I. L. P." has leaned strongly toward communism. Under the leadership of Sir Stafford Cripps and Mr Charles Trevelyan, I. L. P. members who opposed the secession organized a Socialist League, which, however, did not endure.

an early realization of the socialist ideal, even if conditions had been more favorable for doing so. It did not even try; and in the words of a Labor writer, the situation had come to this, that either the party had to drop socialism or it had to drop leaders who were not socialists. After the shake-up, there was a decided swing to the left; at the party conference of 1932, complete severance from the methods of the past was the keynote of the discussions, and "gradualism" was expressly repudiated. This was not construed to denote a renunciation of constitutional methods; the party was not becoming revolutionary. The stand taken was, however, interpreted to mean (1) that Labor would not be likely again to assume office until it could do so with the backing of an absolute parliamentary majority, and (2) that when such a position was arrived at, transfer of at least the key industries to the state must and would follow immediately.[1]

To the forces carrying the party leftward have, however, been opposed others which since 1933 have sought to push it back into something like its earlier position. The fate that has befallen the German Social Democracy and the German trade union movement since the rise of the Nazis to power has served as a warning; and, after all, the backbone of the British party continues to be the trade unions, which can always be depended upon to put a brake upon the socialistic fervor of the intellectuals. As a result, the more moderate elements have continued in control of not only the General Council of the Trades Union Congress, but also the central machinery of the party; and in 1933 the secretary of the Congress induced the party conference to adopt a resolution expressly repudiating the idea of dictatorship whether of the right or of the left—a position reaffirmed in the conference of 1934. Conflict in the party ranks over fundamental questions of procedure, however, continues and is by all odds the most formidable obstacle to further progress.[2]

[1] Conceivably, however, the party might again find itself in office without the leverage of a parliamentary majority, and a resolution of the same conference declared "that on assuming office, with or without power, definite socialist legislation must be immediately promulgated, and that the party shall stand or fall in the House of Commons on the principles in which it has faith." By proceeding as if it were a majority government, a minority government would, to be sure, bring defeat upon itself. But—so said the strategists—such fidelity to principle and such boldness of procedure would catch the public imagination and, appeal to the country being made, would convert a Labor minority into a majority. Cf. "Labor's Immediate Program," a document issued in 1937 by the National Executive Committee of the party, and to be found conveniently in R. K. Gooch, *Source Book*, 74–79.

[2] Useful publications dealing with the Labor party in later days include C. R. Attlee, *The Labour Party in Perspective*, cited above; E. Wertheimer, *Portrait of the Labour Party* (London, 1929), D. E. McHenry, *The Labour Party in Transition, 1931–1938* (London, 1938); H. Tracey (ed.), *The Book of the Labour Party*, 3 vols. (London, 1926), H. B. Lees-Smith, *Encyclopedia of the Labour Movement*, 3 vols.

4. OTHER PARTIES

Parliamentary government has fewer foes in Great Britain than in any other major European country. Two minor political elements, however, although poles apart in other respects, are agreed in their opposition to it. Formed in 1920 by fusion of one wing of the British Socialist party with sundry local communist organizations, and joined in 1935 by a section of the I. L. P., the Communist party boasts only a few thousand members and seems not only to have no future but to be rather less militant than a decade ago. Wedded to principles and policies taken over from Russia, the party is regarded with hardly less abhorrence by the working-classes than by more conservative elements, and all efforts to secure admission to or affiliation with the Labor party have been fruitless.[1]

Fascism, also, has boldly lifted its head in a British Union of Fascists, led by Sir Oswald Mosley. Without doubt, fascism is fundamentally incompatible with the British temper. Nevertheless, it was inevitable that the examples of Italy and Germany should bring to the surface a certain amount of fascist opinion, and when Mosley, in 1930, forsook the Labor party and organized a "New" party with a policy of national planning and an appeal to patriotic lovers of action, there were those who saw in the move a serious threat to the country's parliamentary institutions. So far as the New party was concerned, the bogy was soon dispelled, a single by-election in 1931 demonstrated that the party had no prospects. As a result of the experience, Mosley, however, became more of a fascist than before, and more bent upon displacing the existing parliamentary régime with a government of authoritarian type. To that end, he and a handful of followers established, in 1932, the British Union of Fascists, which, in the course of a checkered career, seems to have passed the peak of its influence in the following year.[2]

Viewing the tangled party system as it has stood since the World War, observers have discerned three different forms that it might

(London, 1928), R. H. Tawney, *The British Labor Movement* (New Haven, 1925), H. J. Laski, *Democracy at the Cross Roads* (London, 1934), S Cripps, *Can Socialism Come by Constitutional Methods?* (London, 1933), G D H Cole, *A Plan for Britain* (London, 1933), and *British Trade Unionism Today; A Survey* (London, 1939).

[1] J. Strachey, "Communism in Great Britain," *Curr. Hist.*, Jan., 1939

[2] W. A. Rudlin, *The Growth of Fascism in Great Britain* (London, 1935), E. Janeway, "England Moves toward Fascism," *Harper's Mag*, Jan., 1939. [Within two days after Great Britain's declaration of war with Germany on September 3, 1939, the Home Office banned all Communist and Fascist meetings and demonstrations, and both the Communist and Fascist parties were to all intents and purposes broken up.]

eventually take.[1] 1. There might permanently be three major parties instead of two—Conservative, Liberal, and Labor. Even with this condition existing, it would, of course, be *possible* for a single party not only to win a majority of the seats in the House of Commons, but also to poll a majority of the popular vote, and thus to govern as a true majority party. Such a result, however, would be extremely unlikely. More probable would be a situation, such as existed in 1924–29, in which one of the parties should find itself governing by virtue of a majority in the House, but on the basis of only a plurality of the popular vote. This, too, would not be so bad. But still more likely to develop would be situations in which the party in power (a) should be found to have a mere plurality both in the country (as measured by popular votes) and at Westminster, or (b) should have (as was true of Labor in 1929–31) a plurality only at Westminster and not in the constituencies, or again (c) should have (as was Labor's position in 1924) no plurality either in Parliament or at large. In progressive degree, all of these last-mentioned situations would mean minority government, and on that account would be inherently objectionable. The only alternative would be coalition government, of which Englishmen lately have had much, but which they instinctively dislike. 2. There might arise a group system on the order of that prevailing in France and other Continental countries in which free political life survives.[2] For such a system, the elements are undeniably present in the various "wings" and factions which, as we have seen, all of the major parties contain. A group system would, of course, entail coalition government as a regular thing, with all of the disadvantages that Englishmen have been accustomed to find in the operation of the multi-party system of such a country as France. 3. There might conceivably be a return to the two-party alignment of earlier days; certainly the urge toward such an arrangement is, in Britain, very great. This, however, would plainly be conditioned upon the eventual disappearance of the Liberal party—at all events as a party of any considerable importance among the electorate. There can be no

THE PARTY OUTLOOK: SOME POSSIBILITIES

[1] There are, of course, people, who, recalling that the country has been governed by some sort of a coalition approximately half of the time during the last three decades, contend that the day of government by party is past. The parties and their leaders, however, give no sign of thinking so; every party, large and small, strives to maintain its identity and to keep its fighting machine in order, each of the more important ones, at least, wants and expects sooner or later to capture undivided control.

[2] See Chap. xxvii below.

reasonable doubt about the lasting qualities of Conservatism and Labor. There is in every country a place for a conservative (not necessarily reactionary) party—a party that is not so much an army on the march as a garrison holding the fort, a party that represents the eternal stand of the "haves" against the "have nots." In contemporary Britain, this position is filled appropriately by the party of Baldwin and Chamberlain and Churchill—a party that normally commands the support of anywhere from 35 to upwards of 50 per cent of the electorate. Similarly, in every country there is, under modern conditions, a place for a party that perpetually challenges the existing order and fights for far-reaching changes in it. Such a party is British Labor.

WILL THE LIBERAL PARTY SURVIVE?

What, it might be—and has been—asked, is there left for British Liberalism to be and do? The answer from Conservatives—echoed by Labor—has been, "Nothing." For years, a gallant band of Liberal leaders fought desperately to convince the nation that theirs was not a dying party, that as between the conservatism and immobility of the "Tories" and the socialism of Labor there was room—and need—for a middle-of-the-road attitude, policy, and party.[1] Nor, as electoral statistics show, was the fight wholly in vain. Nevertheless, the conviction has grown that the party battle of the future is to be simply between Conservatism and Labor, and Liberals themselves, conceding this in increasing numbers, have, as we have seen, been drifting heavily into the ranks of the other parties Conservative and Labor strategy, *e.g.*, in resisting the Liberals' urgent demand for proportional representation, has long been predicated on the assumption, and motivated by the hope, that the third party will eventually be edged out of the political arena altogether.

BI-PARTY SYSTEM CONVENIENT BUT NOT ESSENTIAL

On the basis, simply, of party alignments in the House of Commons, the country is even now as close to a bi-party system as in 1914. Viewed in terms of party followings, however, the case is far otherwise, the electorate is still divided, on a large scale, three ways. Fortunately, the survival and well-being of the British nation is not conditioned upon a restoration of the historic bi-party system Indeed, with all its advantages of simplicity and responsibility, that system has its shortcomings, although coming distinctly as a surprise, one nowadays occasionally hears even an Englishman argue that a

[1] The lines on which the Liberal party might be rehabilitated, as they appeared to a young Liberal leader a decade and a half ago, are set forth in interesting fashion in Ramsay Muir, *Politics and Progress* (London, 1923)

group system is less artificial and better suited to the circumstances of the time.[1] After all, party systems are means, not ends. If a country's voters are content to divide into no more than two opposing forces, that is probably something to be thankful for. But if such division does not satisfy, it is futile to try to maintain it by traditions and manipulations. The English constitution has survived greater shocks than the collapse of bi-partyism, even granted—a thing as yet by no means proved—that the collapse is real and lasting, and not merely a passing phase.[2]

[1] *E g*, Sir Arthur Steel-Maitland, in *Polit. Quar.*, Jan–Mar, 1932, p 27 For a vigorous counter-argument, see F. J. C. Hearnshaw, *Conservatism in England*, 4–5.
[2] See a very good discussion in R. Bassett, *op. cit.*, Chap. ii

CHAPTER XVII

Party Organization and Activities

HOWEVER firmly a political party may be grounded upon common principles and interests, it achieves effectiveness, in the long run, only in proportion as it develops machinery for holding its members in line, winning recruits, formulating policies, selecting candidates for office, raising funds, and attracting the electorate to its point of view at polling time. Parties have been far more successful in this respect in some countries than in others, and in any given country certain parties will usually be found better organized than most or all of their competitors. Organization of the kind reaches its maximum of authority and efficiency in the Fascist party of Italy, the National Socialist party of Germany, and the Communist party of Russia, each of which holds the field without competitors and is to all intents and purposes not only a party but also a government[1] Leaving out of account the extraordinary arrangements found under such dictatorial régimes, and considering only parties which exist alongside other parties, with which they contend on more or less equal terms, the countries in which party organization is most elaborate and stable are Great Britain, the British dominions, and the United States. Until the Hitler government broke up the party system in Germany in 1933, that country undoubtedly would have deserved to be included in the list.[2] The Netherlands, the Scandinavian countries, Switzerland, and Japan also have some parties that have attained a high degree of organization. In France, there is increasing organization as one moves from the less stabilized groups of the center toward both the right and the left. But in any event, the parties of Great Britain stand at, or near, the top, and in that country, the already elaborate party mechanisms described more than a generation ago by the Russian scholar Ostrogorski[3] have in later days grown decidedly more imposing, more closely inte-

PARTY ORGANIZATION IN DIFFERENT COUNTRIES

[1] See Chaps. xxxvii, xli, xliv below.

[2] See Chap. xxxv below.

[3] In his *Democracy and the Organization of Political Parties* (New York, 1902), I, Pt. II, Chaps. II–IX, Pt. III, Chaps. I, V–VII

grated, and more significant. Even if no other influences had been at work, the doubling of the electorate and the march of Labor to front-rank importance in the past quarter-century would of themselves have entailed impressive extensions of party machinery and techniques.

GENERAL PLAN OF BRITISH PARTY MACHINERY

Despite significant differences at certain points, all political parties in Great Britain are organized in pretty much the same way; and in the case of each, the machinery falls into two main parts, *i.e.*, that which is inside of Parliament and that which is outside. The parliamentary portion consists of three principal elements: (1) the group of party members in Parliament (more particularly in the House of Commons) considered as a whole, and commonly referred to as the "parliamentary party"; (2) the leaders within this group; and (3) the whips. The extra-parliamentary portion includes mainly (1) the local party organizations in the constituencies, and (2) the national organizations (including the highly important "central office") built up in times past by federating these local bodies.

ORGANIZATION IN PARLIAMENT:

1. THE PARLIAMENTARY PARTY

Notwithstanding what was said earlier about the increased watchfulness of the people over their representatives at Westminster,[1] the group of parliamentary members identified with any given party is subject to no great amount of control by any agency or authority of the party outside. At all events, this is true of the Conservatives and Liberals. To speak of these parties first: the "parliamentary party," and not any congress or committee of the nation-wide party organization, chooses the leader, who, when the party is in power, is the prime minister and when it is not in power is the leader of the opposition; when the party is in power, policy-making is left very largely to the cabinet (which normally is itself, of course, a party group), yet the parliamentary party may be called into conference—as it is certain to be, at fairly frequent intervals, when the party is merely in opposition; and while the commoners may individually, as candidates for election, have pledged themselves before their constituents to stand for certain principles and to support certain policies, the parliamentary group is free at all times to determine its course of action, independently of any instructions either from constituents or from party organizations outside of Westminster. To be sure, decisions may often be reached by the leaders alone—in the case of the party in power, by the cabinet—and meetings of the parliamentary party may be designed not

[1] See pp. 253–254 above.

so much for deliberation as merely to give the leaders a chance to instruct and spur their followers. But in any case, there will be no disposition to deny to the party members at Westminster full legal and moral right to be guided by decisions arrived at on the spot. The situation in the Labor party is somewhat different, in that the party constitution requires the parliamentary representatives, singly and collectively, to "act in harmony with the constitution and standing orders of the party," and also enjoins that the national party executive and the parliamentary labor party shall jointly discuss matters of party policy at the opening of each parliamentary session, and at any other time when either body may desire such conference This undoubtedly imposes some restraint. In practice, however, Labor's parliamentary group also enjoys substantial autonomy; it selects the party leader and deputy leader, appoints whips, makes and enforces standing orders, and decides upon tactics with quite as much freedom as in the case of the other parties; only on the matter of principles is it bound.

2. THE PARTY LEADERS

If the truth be told, it is not, in any party, the parliamentary group as a whole that takes front rank as a party agency, but rather the chiefs or leaders. In the case of the party in power at any given time, this means the cabinet.[1] For parties out of power, it means a somewhat less definite, yet perfectly recognizable, group of men who, if the party were to come to power, would assume most or all of the cabinet posts. At the head of the group, in either situation, stands *the* leader, designated as such, under practice of the Conservatives, for as long as he will serve, chosen for a year at a time in the case of the other parties. His is the voice that is most influential in policy and tactics, his the power, indeed, in the practice of the Conservatives, to commit the party singlehandedly by his assertions and promises and to define its course of action. Conservative leaders usually try to get along without so much as convoking the parliamentary party except at times of crisis.

3. THE WHIPS

Each group of leaders has, in each house, the assistance of a number of "whips." These are in all cases members of the house in which they function, although by custom they take no part in debate. The government whips in the House of Commons are usually four in number, *i.e.*, the chief whip, who holds the office of Parliamentary Secretary to the Treasury,

[1] The subject is here discussed in terms of regular party government Under coalition government, the government leaders are drawn from different parties But they are likely to stand out even more distinctly from their composite parliamentary following.

and three Junior Lords of the Treasury.[1] They are, of course, ministers, and, as such, are paid out of public funds. The whips of the opposition parties, usually three for each, are private members, named by the party leader (by the parliamentary party caucus in the case of Labor), and unsalaried. The functions of the government whips consist, chiefly, in seeing that the ministry's supporters are at hand when a division on party lines is to be taken, keeping the ministers informed on the state of feeling among the party members in the house, bringing pressure to bear upon negligent or rebellious members, acting as intermediaries in making up slates for select committees, and serving as government tellers when a division is to be taken on party lines. "Stage managers," Ostrogorski calls these officials; "aides-de-camp, and intelligence department, of the leader of the house," they are termed by Lowell. The duties of the opposition whips are of similar nature, with allowance made for the differences arising from the fact that the leaders whom they serve are not in office but only hope to be.[2]

ORGANIZATION OUTSIDE OF PARLIAMENT A PRODUCT OF THE LAST HUNDRED YEARS

Outside of Parliament, party organization developed relatively late; local machinery in the constituencies made its appearance only after the Reform Act of 1832, and the first party organization to operate on a nation-wide scale was founded less than 75 years ago. The reasons are not difficult to discover. Prior to 1832, parliamentary seats were, in many boroughs, dispensed as patronage, or sold to the highest bidder, in most other constituencies, county and borough, there was only a handful of voters, with little of what we call group consciousness; only here and there—as in the borough of Westminster—was the electorate large enough to form any real basis for party groupings. The act of 1832, however, changed this situation considerably. Half a million persons were added to the electorate; the rule was introduced that no one might vote unless duly registered; and the constituencies were so reconstructed that in practically all cases the choice of representatives was thrown into the hands of a considerable number of people. In numerous places where elections had previously been merely a matter of form, there were now to be genuine contests, with the difference between success and failure measured in terms of the number of qualified and registered voters that could be got to the polls. The lesson for party leaders and supporters, national and local, was obvious: agencies must be created which would see to it that the new

[1] Conservatives and Liberals have two whips each in the House of Lords.
[2] M. Ostrogorski, *op cit.*, I, 137–140; A. L. Lowell, *op cit*, I, 448–457.

voters were registered, instructed, canvassed, and, when necessary, stirred to action at election time.

EARLY REGISTRATION SOCIETIES

The device hit upon was the registration society, which thus became the earliest form of local party organization. Almost as soon as the Reform Act was on the statute book, societies of this nature, both Conservative and Liberal, appeared in certain constituencies, and by 1840 they were common throughout the country. At first, they confined their activities largely to getting inexperienced, and often apathetic, voters on the parliamentary register and keeping them there—those, at all events, who could be depended upon to vote right. But presently they added canvassing voters (new and old) in their homes, supplying them with information about the candidates and the issues, persuading the hesitant, and rounding up the faithful at the voting places. When another million was added to the electorate in 1867, the responsibilities of these societies were augmented, and of course they were further increased in 1884. For a long time, the societies did not attempt, except in isolated instances, to nominate candidates. Men were left to announce themselves to the voters, or, at most, the selections were made by a few influential leaders. Sooner or later, however, the local organization was bound to come to feel that this important function, too, lay within its province.

RISE AND SPREAD OF THE CAUCUS

This development was fostered by the rise of the caucus. The term "caucus" has somewhat sinister associations in American politics, many movements on this side of the Atlantic, conceived and carried out in the interest of popular control in government, have had for their object the overthrow of some kind of a caucus. But whereas the American caucus has usually been a self-constituted clique or faction operating on oligarchical lines, the British caucus was from the first a means of achieving broader democracy. The initial appearance of the caucus in its British form was in the city of Birmingham, where, during the sixties, the Liberals adopted the plan of assembling all of the party members in each ward in a caucus, each such meeting choosing a ward committee, which, as the machinery was perfected, began sending delegates to a central convention representing the entire city. The principal author of this plan was Joseph Chamberlain, then a Liberal, although destined to play his memorable rôle as a national statesman under the Conservative banner, and it is interesting to note that Chamberlain had visited America and had some acquaintance with conventions, caucuses, and other party devices on this side of the Atlantic. The new scheme was looked at askance by

many Englishmen as likely to prove a first step toward the rule of rings and bosses then notoriously prevalent in American cities. But it was proceeded with, and the general election of 1868 afforded convincing demonstration of its effectiveness. Birmingham, it is necessary to note, was one of a limited number of boroughs in which, with a view to assuming some representation for minorities, the Reform Act of 1867 required electors to vote for fewer candidates than the number of seats to be filled. Through its general committee, the Liberals' central association in the constituency both nominated the candidates of the party and guided the electors in distributing their votes in such a way that all three seats were captured, and not only these but also the city council and the school board.[1] The upshot was that the Birmingham plan of caucus and convention—of local party organization on the basis of the full party membership rather than simply of a small registration society, and with selection of candidates as well as promotion of their candidacy in the hands of the organization's central association in the constituency—began spreading to all parts of the country, being taken up not only by the Liberals, but also by the Conservatives, who were driven to it in self-defense.

LIBERAL LOCAL ORGANIZATION

Liberal organization on these lines naturally went forward faster in the towns than in the rural sections, because townspeople can be got together more easily and because the Liberal forces were predominantly urban. By the opening of the present century, however, there was a Liberal association in practically every constituency, rural and urban, in which the party was not in a hopeless minority; and this continues to be the case today. The National Liberal Federation, which in 1877 brought the local associations into a common nation-wide organization, guides and advises in the formation and conduct of the local units. Aside, however, from requiring that their government shall be based upon popular representation, it lays down no positive regulations; and it is especially to be observed that the state seeks to regulate in no way whatever either these local associations or any other party organizations—except only as their activities may be affected by corrupt and illegal practices acts and by restrictions upon campaign expenditures. Naturally, there is a certain amount of variation. Yet, wherever local organization exists, every rural parish and small town has a primary association; every parliamentary divi-

[1] For an account of this interesting episode, see M Ostrogorski, *Democracy and the Organization of Political Parties*, I, Chap. iii. The outcome of the experiment gave the caucus as a party device a great impetus, but discouraged further adoption of "limited voting." See p. 176 above.

sion of a county has a council and an executive committee; every parliamentary borough is organized by wards and has officers and committees on the plan of the Birmingham caucus. In some cases, the associations are open to men and women alike; in others, there are separate, but cooperating, organizations for the sexes.[1]

CONSERVATIVE LOCAL ORGANIZATION

In local organization, the Conservatives were hardly behind their rivals, and in the formation of a nation-wide league of local societies they led by a full decade. With more money to spend, they eventually developed an even more elaborate network of local associations. As in the case of the Liberals, the authorities of the Conservative national federation recommend certain forms of organization, embracing mass meetings, committees, councils, and officials in such combinations as seem most likely to meet the needs of parishes, wards, county divisions, boroughs, and other political areas; and in the main these recommendations are carried out. In earlier times, both parties had considerably more success in organizing their adherents in the boroughs than in the rural sections, but nowadays the difference is less pronounced.[2]

LABOR LOCAL ORGANIZATION

Prior to 1918, local organizations of the Labor party took the form almost exclusively of trade unions and socialist societies, although there were a few constituency labor parties of more general scope. As explained elsewhere, the reconstruction of party machinery in that year involved mainly the reorganization of these local parties and the establishment of such parties in large numbers of constituencies previously without them, and nowadays the local party units consist chiefly of (1) trade unions, (2) socialist societies, and (3) constituency organizations, known in county constituencies as divisional labor parties and composed of the local branches of trade unions and of socialist and cooperative societies, together with persons who have joined the party as unattached individuals. In many constituencies there is also a women's section, and in addition a branch of the League of Youth, a special organization for persons

[1] The sharp decline of the Liberal party since the World War has, of course, extinguished some local organizations and weakened many of those that remain

[2] Party organization prior to the rise of the caucus is treated in M Ostrogorski, *op cit*, I, 135–160, and the effects of the Reform Act of 1832 on party activities are described in C Seymour, *Electoral Reform in England and Wales*, Chap IV The rise of the caucus is dealt with in Ostrogorski, "The Introduction of the Caucus into England," *Polit. Sci. Quar*, June, 1893, but a much fuller account is given in the same author's *Democracy and the Organization of Political Parties*, I, 161–240. The salient features are presented in A. L. Lowell, *op cit*, I, 469–478.

under 21.[1] As pointed out by the present national party leader, the constituency labor party is a microcosm of the whole organization, a self-contained unit governed by a representative management committee, and entitled to one delegate in the national party conference for every 5,000 members (or fraction thereof) on which it pays fees.[2] Even yet, there are constituencies in which there is no divisional or other local labor party; but the number continues to grow, especially in the rural constituencies, where the central office at London is now spending most of its organization funds.

NATIONAL PARTY ORGANIZATIONS AND THEIR NATURE

It was to be expected that after local associations under the banner of a particular party had grown numerous, effort would be made to combine them into some sort of a league or federation; and this is precisely what happened. The Conservatives led the way by organizing a National Union of Conservative and Constitutional Associations in 1867, and their Liberal rivals countered ten years later with a National Liberal Federation. In due time, the Labor party was built up by federating trade-union, socialist, and other local organizations; and to this day it remains a characteristic of English parties, as contrasted with those of most other countries (including the United States), that they are combinations, not of individuals as such, but rather of local or regional societies or associations. Ordinarily, a person belongs to a given party by virtue of being a member of some local branch of it or some local group affiliated with it.

THE PARTY CONGRESS

The nation-wide organization of the three major parties is pretty much of a pattern, and so far as the Conservatives and Liberals are concerned, it can be described in few words. First of all, both older parties make provision for a national representative body, or party congress. The Conservatives call theirs the "Conference"; the Liberals call theirs the "Assembly" (formerly the "Council"); but it is practically the same thing in both instances, and serves substantially the same purposes. Meeting once a year in some important center, the congress consists in both cases of a thousand or more delegates (sometimes as many as two thou-

[1] As would be surmised, there is much duplication of membership. A person belonging as a trade-union member may belong also as a member of a socialist society and in other capacities as well, so that while the total party membership is reported (1938) as about 2,500,000, the actual number of individuals is considerably smaller. If a person is a member four times over, he pays contributions four times through different bodies, and has four-fold representation in the party's annual conference.

[2] C. R. Attlee, *op. cit.*, 89

sand in the case of the Conservatives) sent by the affiliated local organizations; and whereas formerly, in both parties, it sought to formulate principles and policies—somewhat on the lines of the platform-making carried on in American party conventions—it nowadays has no very important function except to elect certain party officials and committees and to afford opportunity for speeches by the party leaders in Parliament and for general discussion calculated to whip up party interest and promote party morale. The main leader of the party is of course chosen, not by the congress, but by the group of party members in Parliament.

WHY PLATFORM-MAKING BY THE CONGRESS DID NOT DEVELOP

The experience of the older parties with platform-making by the annual congress is interesting and instructive. It is not surprising that the party representatives, gathered in deliberative conclave, should have supposed it within their province to debate matters of party policy and to adopt resolutions concerning them, for the guidance of the men primarily responsible for the party's course in Parliament and before the country, namely, the ministers when the party was in power and the opposition leaders when it was out of power. We have seen enough, however, of the attitude and temper of the party leaders—especially when in authority at Whitehall—to know that they would hardly relish such efforts to control their actions from the outside. Accustomed to full liberty to meet parliamentary situations as they arose, and to formulate the principles and policies to be pressed when under the necessity of going to the country for reelection, they could hardly be expected to take kindly to congress-made programs or platforms calculated to tie their hands.

THE CONSERVATIVES AND THEIR CENTRAL OFFICE

Each national party organization had to make the discovery and adjust itself to the situation as best it could. Finding that the resolutions adopted by its congresses carried little weight in parliamentary circles, the Conservative National Union came to the conclusion that its usefulness lay in the direction of the voters rather than in that of the party leaders and law-makers. It could not make platforms that would have much force; it could not select the party chief who, when the party was in power, would be prime minister, it could not, in short, override the jealously guarded independence of the party organization in Parliament. But there were other and important things that it could do—things that had to be done if the party's morale was to be kept up and its strength maintained, and things which the leaders at Westminster were glad enough to en-

trust to it. Finding its proper sphere, the Union set up at London a Central Office, which, under the direction of a "chairman of the party organization,"[1] a principal agent, a director of publicity, and various other salaried officials, assists in establishing new local associations where they are needed, aids and encourages associations which are beset with special difficulties, prepares suggestions and instructions for local party committees and workers, distributes literature, raises money, provides popular lectures, collects and broadcasts information having party significance, and in sundry other ways helps keep the machinery—both local and national—up to the level of efficiency required in a country where elections may come almost without warning. With the collaboration of the chief whip, the office also compiles lists of persons who would make acceptable candidates for parliamentary seats, and not only advises party leaders in the constituencies upon the selection of candidates living on the spot, but stands ready to provide any constituency with a candidate drawn from some other part of the country, and, if necessary, to see that such candidate is supported with speakers and funds. The result of all this has been an extraordinary centralization of power in the hands of a relatively small group of persons. If the cabinet has become master in the domain of parliamentary life, the Central Office has no less become such in that of extra-parliamentary party politics. Democracy in party management, as embodied in the annual conference and its sub-structure of local organizations, has yielded to the prime necessities of the political battlefield—strong leadership, unity, and dispatch.[2]

PARALLEL EXPERIENCE OF THE LIBERALS

The Liberals have had a similar experience. As early as 1881, the Council (as the party congress was at that time called) tried its hand at platform-making, and during the next decade it went still further in this direction, even though it presently appeared that what the body was usually expected to do was merely to ratify resolutions prepared in advance by committees, rather than to work out its own statements of policy. A party out of office habitually talks freely about what it would do if it were in office—especially if it has little hope of being in office soon. This was the position of the

[1] This official (selected by the party leader) is regularly a member of Parliament of cabinet rank, and therefore serves as a link (much as the chief whip at one time did) between the party organization inside Parliament and that outside

[2] The increased significance of the Central Office in recent times is well brought out by J. K. Pollock in *Polit. Sci. Quar.*, June, 1930, pp. 163 ff. The constitution and rules of the National Union of Conservative and Unionist Associations will be found in R. K. Gooch, *Source Book*, 39–51.

Liberals for some years after 1886; and the Council's resolutions committed the party from year to year to a steadily lengthening list of reforms, culminating in the famous Newcastle Program of 1891, which, as one writer remarks, catalogued proposals that could hardly have been embodied in statutes in less than ten years, even by a cabinet backed by a large and homogeneous majority. The Gladstone and Rosebery governments of 1892–95 were repeatedly embarrassed because of being unable to do things that the nation had been led to believe that a Liberal government would do, and from that time forth the party leaders saw to it that the Council left platform-making mainly to other hands. Thus, equally with the less ambitious Conservative Union, the Liberal Federation failed to build up and maintain a great popular party legislature; as an organ for the popular control of party policy and of the acts of the party representatives in Parliament, it, too, has proved a sham. Like its Tory counterpart, furthermore, the Liberal Federation receded into the background while a Central Office in London became by all odds the most active and important instrumentality for promoting party organization, raising funds, selecting candidates, and carrying on or directing party propaganda.

NATIONAL ORGANIZATION OF THE LABOR PARTY·

The national organization of the Labor party must be spoken of quite separately for the reason that, while bearing a good deal of external resemblance to that of the older parties, there are also some very significant differences. To begin with, Labor alone among the three major parties has a formal documentary constitution—an instrument dating from the reorganization of 1918, although later revised a number of times, notably in 1928 and 1937. In the second place, the party Conference is the supreme and final authority in a literal sense which, as we have seen, in no wise holds for the other parties. Composed of the delegates of trade unions, socialist societies, divisional labor parties, and other affiliated organizations, voting in accordance with the number of members on whose behalf affiliation fees have been paid,[1] the Conference

1. THE CONFERENCE

[1] The 1937 annual conference at Bournemouth brought together 705 delegates representing a party membership of somewhat more than 2,000,000. Trade unions, socialist societies, and local labor parties send one delegate for every 5,000 members for whom fees have been paid, trades councils and federations of local labor parties send one apiece, and an additional woman delegate may be sent from any constituency in which the number of affiliated and individual women members exceeds 2,500. All members of the party executive and of the parliamentary labor party, and all duly approved Labor candidates for seats in the House of Commons, are also members *ex officiis*, although with no right to vote unless sent as delegates. No delegate may represent more than one organization, all must be paid permanent officials or *bona*

meets every spring (autumn until 1938) in a populous center selected by the National Executive Committee, with also an occasional special meeting; and, whereas the Conservative and Liberal congresses, while debating and voting on resolutions intended for the guidance of the party leaders, cannot expect their decisions to be acted upon by those leaders except in a purely discretionary manner, the Labor "parliament" not only has complete control over the party constitution (which it framed and adopted), but, according to the constitution itself, has full and effective power to decide from time to time, by a two-thirds vote, what proposals shall be included in the party program and to "direct and control" the party's general activities. Although the Conference no longer elects the National Executive Committee, that general agency of party administration must submit full reports and financial statements to it and take orders from it. Meetings, unlike those of Conservative and Liberal congresses—which, speaking broadly, tend to be only "demonstrations"—are true "conferences." To be sure, as in the other cases, proceedings are to a considerable extent dominated by the party executive—in American parlance, the machine—and, as indicated above, the leaders dislike, almost as much as in the other parties, to have their hands tied by positive mandates imposed by the rank and file. To be sure, too, electoral platforms and manifestoes are the handiwork, not of the Conference, but of the parliamentary labor party working in conjunction with the party executive. Nevertheless, the broad program to which electoral manifestoes must conform is laid down by the Conference; and neither the executive of the party nor the party members at Westminster can hope, even though so minded, to escape ultimate Conference control.[1]

2. THE PARTY EXECUTIVE

The party executive consists primarily of the National Executive Committee, together with an auxiliary Central Office. Formerly, all members of the Committee were elected annually by the Conference. Since 1937, however, the 12 representatives of trade unions have been

fide dues-paying members of the organization which they represent; and—although no formal pledge is exacted—all are honor bound to support the constitution and general program of the Labor party.

[1] "As one surveys Labor party conferences, . . . he cannot fail to admire their democratic quality, their genuine discussions, their representative flavor. They have frequently been involved in perplexities. They are occasionally quite bitter. But they have in the long run been representative of the party, and they have produced a series of party programs which would do credit to any party organization in the world." J. K. Pollock, "The British Party Conference," *Amer. Polit. Sci Rev.*, June, 1938, p 527. This article contains the most recent and useful discussion of the general subject.

designated by the unions themselves, the seven members representing constituency parties by the parties, the five women members by affiliated women's organizations, and the sole representative of socialist and cooperative societies by the appropriate societies, and these 25 people, plus the party leader, the secretary, and the treasurer in an *ex officio* capacity now constitute the Committee.[1] In contrast with the situation in earlier days, the trade-union contingent is at present in a slight minority. Complaint is heard, however, that, since the other contingents may very well contain persons who are trade-union members and have the trade-union point of view, the unions still dominate, not only the Conference (because of the vastly superior numbers of votes that they control in it), but the Committee as well, reducing the party to merely a sort of political wing of the Trades Union Congress.[2]

Meeting as a rule only once or twice a month (though often for two or three days at a time), the Committee does most of its work through sub-committees, of which some have to do with matters of finance and administration, others with questions of party policy, and still others, in the capacity of joint committees with the Trades Union Congress, with subjects in which there is a common interest. Other prominent party members having specialized information are often drawn in to assist. Speaking broadly, the tasks of the Committee include: (1) seeing to it that the party is represented by a properly formed organization in every constituency where practicable, (2) carrying out the decisions and orders of the Conference, (3) interpreting the party constitution and standing orders in cases of dispute, subject to a right of appeal to its superior, the Conference, (4) expelling persons from membership and disaffiliating organizations which have violated the constitution or by-laws; and (5) supervising the multifarious work carried on at and through the party headquarters, *i.e.*, the Central Office at London. In those of its activities having to do with building up party strength in the constituencies, it is always handicapped by inadequate financial re-

[1] Accuracy requires it to be recorded that prior to 1937 the various groups nominated their candidates to the Conference On the circumstances under which the changes of 1937 were made, see *Politica*, Mar., 1938, p. 77. These related chiefly to the long-standing dissatisfaction of the non-trade-union elements with control of the party by the unions So great was the tension that before the 1937 Conference met it was freely predicted that unless their demands were met the constituency labor parties would secede. In view of the relative conservatism of the trade unions, the new set-up was expected to give the party somewhat of a push toward the left

[2] In theory at least, the labor movement as a whole is directed by a National Council of Labor of 15 members representing the Labor party and the parliamentary labor party as political agencies and the Trades Union Congress as labor's major organization on the economic side.

sources; although the obstacle is to some extent overcome by the wholly exceptional amount of voluntary and unpaid service which the Labor party is able to secure from its adherents.

The Central Office is under the immediate direction of the party secretary and the party treasurer (both chosen by the Conference), with whom are associated an assistant secretary, a national agent, and a chief woman organizer, each with a suitable staff. Throughout the country, also, male and female district organizers and other agents work under Central Office direction. Finally, there are special Central Office departments having to do with research and information, press and publicity, international relations, and legal advice.[1]

SELECTION OF LABOR CANDIDATES

Coming within the purview of the Executive Committee and the Central Office is not only the supervision of party organization in the constituencies, the promotion of party propaganda, the support of a party press, and the management of party funds, but the approval, and many times the selection, of parliamentary candidates. The local constituency organizations have, indeed, the right of initiative and choice. But the central organization must coöperate wherever desirable in finding the best candidates; it must see that every candidacy is strictly in accordance with the party constitution; and no candidate may finally be adopted until he or she has received the national executive's express endorsement—a degree of control which neither of the older parties has ever dreamed of attempting to exercise. Only now and then does the central organization find it necessary actually to veto a local selection; but the right clearly exists. The main requirements made of aspirants are: (1) that they have adequate financial backing, (2) that they go before the electorate under no designation other than that of "Labor candidate," (3) that in any general election they include in their election address and emphasize in their campaign the issues which the national executive and parliamentary labor party have selected from the general party program to be stressed in that particular contest, and (4) that they agree, if elected, to act in harmony with the party constitution and standing orders. Most of the candidates selected by the constituencies nowadays are taken from a list endorsed in advance by the national executive. Once seated at Westminster, successful candidates pass largely out of the control of the national executive, and even of the Conference, becoming, of course, members of the parliamentary labor party and subject to its discipline. They continue,

[1] For the constitution and standing orders of the Labor party, see R. K Gooch, *Source Book*, 59–73.

however, bound in honor by the conditions and stipulations under which they have been accepted as candidates, and ordinarily any tendency to insubordination will be curbed by the thought that when another election comes around they will have no chance to be candidates again unless the national executive is willing to give them its stamp of approval.

PARTY PROPAGANDA

Political parties have one paramount objective, namely, to win elections, and their chance of attaining it is conditioned not so much upon two or three weeks of feverish activity during campaigns as upon persistent effort, year in and year out, to inspire and instruct their workers, to hold the rank and file in line, to educate the electorate on public issues, and to attract a never-ending stream of recruits. The devices employed for these purposes are many. Youth organizations (of the nature of the Conservative Junior Imperial League and the Labor League of Youth), although developed on no such scale as under the dictatorial régimes on the Continent, are important means of capturing the young and training them in the faith. Schools and universities, while presumed to be conducted on a non-partisan basis, lend themselves in numerous ways to imparting political sympathies and aversions. The motion picture sometimes contributes, and the radio, although administered by a non-partisan British Broadcasting Corporation as a government monopoly, is available in slowly increasing degree for political, and on occasion party, discussion and instruction. Even churches cannot be left out of the picture, and general social and business intercourse has much, even if not easily measurable, importance.

High in the list of party propagandist activities must be placed research and publication—undertakings which have been developed to a loftier point in Great Britain than in the United States or perhaps any other country. For research aimed at long-term study of national problems, rather than at merely supplying ammunition for immediate use in campaigns, the Conservative party has made a limited amount of provision; and during the twenties a notable series of studies sponsored by the Liberal party and financed out of Mr. Lloyd George's political fund eventuated in publications such as *Coal and Power* (1924), *The Land and the Nation* (1925), *Towns and the Land* (1925), and *Britain's Industrial Future* (1928)—broadly-based studies of such significance as to prompt some one to remark of the Liberal party that in these later days its function has come to be that of providing programs for non-Liberal governments! The Labor party has, however, promoted research more systemati-

cally than any other. A research department created by the Fabian Society in 1912 was taken over by the party in 1918; and although ten years later it became a separate organization, as it is today, two additional agencies of the kind were later brought into being—one a Labor party research department established in 1926, and the other a new research department of the Fabian Society dating from 1931. Studies made through these channels have to do with land and agriculture, labor problems, education, public health, finance, justice, local government, and other matters, and reach the public through a steady stream of books, pamphlets, and magazine articles.[1] All of the parties, indeed, go in extensively for publication. To be sure, a good deal of what is issued consists of materials designed only for party organizations and workers: summaries of election laws; electoral statistics; handbooks on registration and election procedure, information concerning corrupt and illegal practices laws; directions for forming and conducting political clubs, study guides for local groups; "notes" for speakers; and what not. But a great deal is aimed also at the general public: party year-books;[2] monthly magazines like the Conservative *Home and Empire*, the *Liberal Magazine*, and the *Labour Magazine;* pamphlets and leaflets making every sort of argument and voicing every sort of appeal, often in the style of a staccato enumeration of "points" for or against some program or policy. Of course, there are newspapers also, ranging from frankly partisan sheets such as the *Daily Telegraph* (Conservative), the *News-Chronicle* (Liberal), the *Daily Herald* (Labor), and the *Daily Worker* (Communist) to renowned journals, of partisan sympathies to be sure, yet of cosmopolitan interest and appeal, such as the London *Times* and the Manchester *Guardian*.[3]

SUMMER SCHOOLS, POLITICAL CLUBS, AND OTHER ANCILLARY ORGANIZATIONS

Still further agencies for promoting party interests, and in this case training party workers and leaders, are summer schools, conducted notably by the Liberal party and by auxiliaries of Labor such as the Fabian Society. Political clubs, too, are of considerable importance, both in the metropolis and in smaller communities throughout the country. Oldest of these

[1] Successive Labor programs—such as *Labour and the New Social Order* (1918), *Labour and the Nation* (1929), and *For Socialism and Peace* (1934)—have been grounded on studies of the kind. Cf. W. Maddox, "Advance Policy Committees for Political Parties," *Polit. Sci. Quar.*, June, 1934.

[2] *The Constitutional Year Book* (Conservative) and the *Liberal Year Book*, published annually, the *Labor Year Book*, issued intermittently.

[3] Cf. H. W. Stoke, "Propaganda Activities of British Political Parties," *Amer. Polit. Sci Rev*, Feb., 1936

in London is the Carlton Club, established in 1831 as a center of Conservative life and activity. Its splendid building in Pall Mall is the place where Conservative members of Parliament commonly gather for consultations, there it was, for example, that the decision was reached in 1922 to withdraw support from the Lloyd George coalition government. Other Conservative clubs, *e.g.*, the Constitutional and St. Stephens, will be found by any visitor to the Pall Mall district. The oldest Liberal organization of the kind, the Reform Club, ceased before the end of the nineteenth century to be a political club in the strict sense, but its place was taken by the National Liberal Club, which, along with other similar establishments in the capital, continues to serve the traditional purposes. Then there are ancillary leagues and societies. The most interesting of these is the Primrose League, founded in 1883 by Lord Randolph Churchill and named after what was supposed to be Disraeli's favorite flower. Elaborately organized, liberally financed, and supported by a membership of from one to two millions, it has been for over half a century a prime agency of Conservative influence, especially at election time There are also the Association of Conservative Clubs, the Young Conservatives' Union, and even the National Conservative Musical Union. The Liberals have the National Reform Union, the National League of Young Liberals, the Land and Nation League, the Eighty Club, and similar associations. Several of these organizations, both Conservative and Liberal, enroll members of both sexes and of all social classes. The Labor party is not without similar auxiliaries. The National Labor Club, founded in 1924, serves as a main social center in the capital, while the Fabian Society, the Labour Teachers' Federation, and other socialist organizations play rôles comparable with those which the Conservative and Liberal auxiliaries have made familiar to every observer of British political life.[1]

PARTY FINANCES. Although the older parties secure some, and the Labor party much, unpaid service, especially in the constituencies, they cannot carry on their multifold activities without large outlays of money. To a degree, the sums needed are raised in the localities in which they are spent, by annual subscriptions, fêtes, bazaars, and similar devices. But the central machine requires vast amounts, too—for salaries of officers and agents, office rentals, clerk hire, printing, postage, travel, assistance to local committees, and various other purposes, and this entails money-raising

[1] For a set of instructions issued by Conservative party headquarters for organizing and running a local political club, see N L Hill and H W Stoke, *op cit*, 191–105

on a nation-wide scale. For their general funds, the older parties have regularly relied upon contributions of members and supporters, made voluntarily, at least in theory, although often extracted from the donors by the importunity of party officials or other workers.[1] Neither the Conservatives nor the Liberals have ever had any general system of assessment under which either local party organizations or individuals were required to contribute, or under which the party managers could know, other than very roughly, how much would be available for their use in any given year. The Conservative party has the support today, as in the past, of most of the country's men of great wealth, and it has been accustomed to be financed by a relatively small number of large (sometimes very large) contributions of landed magnates, brewers, bankers, and capitalists. The public is kept in ignorance of what the party's resources are;[2] but as a rule they afford every appearance of being ample, and an unfailing accompaniment of parliamentary elections is the complaint of opposing parties that the Conservatives enjoy the huge advantage that comes from having fuller coffers.

1. CONSERVATIVES

Even in their palmier days, the Liberals had less to draw upon; the rank and file of the party contained fewer men of wealth, and the organization maintained throughout the country usually gave evidence of frugality, if not of downright parsimony. In post-war years, this handicap was to some extent overcome by the circumstance that during the period of the coalition government Mr. Lloyd George laid the foundations of a large political fund, which, through profitable investment in newspaper properties, continued to grow, and a considerable share of which he, in 1927, agreed to turn to the uses of the Liberal party. The actual sources of this fund have never been explained to everybody's satisfaction, and notwithstanding somewhat ambiguous statements to the contrary, the notion persists that there was a connection between the fund and the lavish bestowal of peerages and other honors in coalition days. At all events, the windfall enabled the party to reconstruct its shattered machinery and to place a full quota

2. LIBERALS

[1] In earlier times, soliciting and collecting party funds was one of the many tasks of the Conservative chief whip in the House of Commons. Nowadays the work is done almost entirely by the Central Office. The same is true in the case of the Liberal party.

[2] As we have seen (pp. 166–168), Great Britain regulates and requires full publicity for campaign expenditures. Whereas, however, the United States first attacked the problem of money in politics by restricting the sources of campaign contributions and requiring publicity for such contributions, Great Britain has no regulations covering either matter

of candidates in the field at the election of 1929 with assurance that they would be given generous financial support. The schism of 1931, however, left not only Mr. Lloyd George, but also his famous fund, outside the breastworks of the party, which accordingly has been obliged to fall back once more upon money raised by general subscription.

3. LABOR

One will not be surprised to be told that the Labor party has proceeded on quite different lines. Lacking sources from which to draw large voluntary contributions, it derives its income almost entirely from affiliation fees—depending, as a leader, C. R. Attlee, has observed, "on pennies, not pounds." Trade unions, socialist societies, cooperative societies, and local labor parties pay into the central party treasury 4*d.* per member per year, with a minimum payment of £4. In the case of trade unions, the amount due is calculated, not on the total membership, but on the number of members contributing to the union's political fund, and it will be recalled that, whereas under the Trade Union Act of 1913 this meant all members not "contracting out," *i.e.*, not definitely refusing to contribute to the political fund, under the Trade Disputes and Trade Unions Act of 1927 it means only such members as "contract in," *i.e.*, such as expressly indicate their desire to make a contribution. By all odds the most important source of revenue is the trade unions, and local labor parties, in selecting candidates, are sometimes obliged to pass over abler men for the simple reason that they lack trade-union backing. Trade-union membership, however, fluctuates widely; the proportion of members contributing for political purposes has been curtailed sharply under the legislation of 1927;[1] and the funds from this source, although constituting more than three-fourths of the party income, are in no wise comparable with the war chest of especially the Conservatives. Small wonder that the party habitually displays resentment because of the virtual monopoly of the press enjoyed by its rivals, the unregulated use of motor vehicles on polling days, and other advantages accruing to the opposition from superior wealth!

"It is," writes an English student of politics (confessedly from a Liberal viewpoint), "one of the most formidable political facts in our national life that of the two most powerful parties in the state, one is tending more and more to pass under the indirect but real and effective control of the organized economic interest of 'Big Business'; while the other is not merely tending to pass, but has definitely

[1] Not more than 60 per cent of the earlier sums are now collected

and formally passed, under the control of the organized economic interest of the trade unions. Both of these interests are vital and essential elements in the life of the community; but neither can safely be permitted to wield political domination in addition to the formidable economic power it already wields over the life of the community. Both of them may be, and doubtless are, inspired by patriotic aims; but neither can possibly escape from its sectional point of view." [1]

[1] R. Muir, *How Britain Is Governed* (rev. ed.), 142. The subject of British party finances is treated in illuminating fashion in J. K. Pollock, *Money and Politics Abroad* (New York, 1932), Chaps. ii–x. On the regulation of campaign expenditures, see pp 166–168 above.

There is singularly little up-to-date and really informing literature on the general subject of party organization in Great Britain. The first volume of M. Ostrogorski, *Democracy and the Organization of Political Parties*, treats the subject historically, A. L. Lowell, in Chaps. xxv–xxxiii of his *Government of England*, describes arrangements as they existed upwards of a generation ago, and useful information is given in H. Finer, *Theory and Practice of Modern Government*, I, Chap. xiv. A good deal can be gleaned from M. Farbman (ed.), *Political Britain; Parties, Politics, and Politicians* (London, 1929), C. S. Emden, *The People and the Constitution* (Oxford, 1933), and P. G. Cambray, *The Game of Politics* (London, 1932). Information concerning present-day party organization has to be pieced out chiefly from party yearbooks and other such publications, supplemented by items and articles in newspapers and magazines. One could wish that either a native Bryce or a foreign Ostrogorski would turn his attention to the broad subject as it lies today, or, short of that, that numbers of investigators would undertake first-hand studies of selected phases, eventuating in monographs comparable with some which deal with party matters in the United States. It may be added that a few pertinent topics—nominations, campaign expenditures, and the formation of public opinion—have been studied by young American scholars, who, however, in some instances, have not yet published their results. Two significant contributions of this character are J. M. Gaus, *Great Britain; A Study of Civic Loyalty* (Chicago, 1929), and J. K. Pollock, *Money and Politics Abroad*, previously cited. Cf. H. W. Stoke, "Propaganda Activities of British Political Parties," *Amer. Polit. Sci. Rev.*, Feb., 1936, J. R. Starr, "The Summer Schools and Other Educational Activities of British Socialist Groups," *ibid.*, Oct., 1936, "The Summer Schools and Other Educational Activities of the British Liberal Party," *ibid.*, Aug., 1937, and "The Summer Schools and Other Educational Activities of the British Conservative Party," *ibid.*, Aug., 1939, J. K. Pollock, "British Party Organization," *Polit. Sci. Quar.*, June, 1930, and "The British Party Conference," *Amer. Polit. Sci. Rev.*, June, 1938.

CHAPTER XVIII

Law and Justice

AN American scholar has computed that the world has known 16 different systems of law, of which half remain alive (either in pure form or in combination with other systems), while the remainder have disappeared.[1] Foremost among the systems still in operation are (1) the Anglican, *i.e.*, the law of England, with extensions and modifications made in various parts of the English-speaking world; (2) the Romanesque, which, similarly, is the law of Rome as elaborated and readapted through the centuries in the numerous lands in which it has prevailed, and (3) the Mohammedan, developed in conjunction with one of the world's great historic religions. Mohammedan law today covers broad areas in northern and central Africa, western and southern Asia, and the East Indies. Nevertheless, one could travel far and wide over the earth without ever setting foot in a country where the legal system is not derived wholly or mainly from the civil law of Rome or the common law of England. The law of practically all Europe west of Russia, of all Latin America except British Guiana, of Japan, of South Africa, of Louisiana, and even of Scotland, is basically Roman; the law of England and Wales, of Ireland, of Canada (except Quebec), of Australia and New Zealand, of various lesser British colonies and dependencies, and of the United States (except Louisiana, Puerto Rico, and the Philippines) is basically English common law. Peoples the world over who find themselves overhauling and modernizing their legal heritage invariably borrow heavily from one system or the other.[2]

THE WORLD'S SYSTEMS OF LAW

[1] J. H. Wigmore, "A Map of the World's Law," *Geog Rev*, Jan, 1929 Cf. the same author's three-volume treatise, *A Panorama of the World's Legal Systems* (St. Paul, 1928), M Smith, *The Development of European Law* (New York, 1928), and J. M. Zane, *The Story of Law* (New York, 1927) The law here referred to is, of course, *private* law (civil and criminal), as distinguished from *public* law Students of government are concerned mainly with the latter, especially the constitutional branch of it. Nevertheless, some acquaintance with the basis and nature of private law helps to an understanding of not only the judicial, but also the executive and legislative, activities of government.

[2] Lord Bryce, "The Spread of English and Roman Law Throughout the World," in *Studies in History and Jurisprudence* (London, 1901).

THE ENGLISH CONCEPT OF LAW

A major concern of those who have guided the development of free government in Britain has been to uphold and fortify the "rule of law"; as observed above, Englishmen who deplore the growing exercise of judicial functions by administrative authorities do so mainly on the ground that it interferes with the full operation of that historic principle.[1] As commonly construed, the rule of law means two things chiefly: (1) that no person may be deprived of life, liberty, or property except on account of an infraction of the law proved in open court, and (2) that no one (save only the king) stands above the law, and that therefore every one is liable, in case of such infraction, to punishment or exaction of reparation on lines laid down by law, regardless of his station or connections.[2] The question naturally arises as to what is meant by "law." For Englishmen, the answer is comparatively simple, namely, all rules, of whatever origin or character, which the courts will recognize and enforce. In Germany, France, and other Continental countries, jurists and philosophers long ago developed the idea of natural law as a system of principles, lying back of and superior to man-made rules, and deducible by reason from the inherent nature of man and things. As late as the eighteenth century, this concept found support in England as well—for example, in the writings of John Locke. The vigor of the king's courts, however, in molding a great system of common law, together with the rise of a legally omnipotent Parliament presumed to translate the will of the people into binding statute, gave positive law as expounded by Hobbes and Austin a substantial victory over natural law. Today, principles or precepts which the courts will not enforce may have large importance as custom, and perhaps as morality; but, for Englishmen at all events, they are not law.[3]

GENERAL CHARACTERISTICS OF ENGLISH LAW

Certain general characteristics of English law as a system soon become apparent to any observer. The first is its purity. The law of many countries—Russia, Japan, China, Siam, Turkey, Persia—is a blend or composite. English law, to be sure, has not been immune from extraneous influences, even in the old home; when the seventeenth-century jurist Coke wrote in his *Institutes* that "our common

[1] See p. 116 above.

[2] For an interesting interpretation of the rule of law and what it means, see W. S. Holdsworth, *Some Lessons from Our Legal History* (New York, 1928), Chap. iii.

[3] See A. L. Lowell, *op. cit.*, II, Chaps. lxi–lxii. Natural-law ideas are, however, far from dead, even in England and the United States, as is demonstrated in C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930).

laws . . . have no dependency upon any foreign law whatever." he was carried quite a bit too far by patriotic enthusiasm. Roman law exerted influence in the Middle Ages; likewise both canon or church law, and the law merchant or commercial law, of Continental Europe. An insular position, prolonged legal development before the foreign impact was felt, and the generally self-sufficing disposition of her people saved England, however, from being swerved far out of her accustomed legal channels. On the whole, "England is isolated in jurisprudence; she has solved her legal problems for herself." A second characteristic—which would be anticipated by anyone familiar with the mode of growth and present form of the country's constitutional jurisprudence—is the law's lack of symmetry and logic. The Roman (at least of later days) had an aptitude for orderliness, coherence, and formal consistency in which the Englishman is confessedly deficient. As a result, Roman law, and all law derived from it (notably that of France), has the polish, balance, and immobility of the pyramid of Cheops, whereas English law has, rather, the deviousness and casualness of a labyrinth.[1] This is not to say, however, that the latter is wanting in fundamental unity or in continuity. Formed originally of two streams—the Saxon and the Norman-French—which flowed together after the Conquest, English law developed thenceforth as a single national system with never a break down to our own day; and one can read one's way backward in the text-books and commentaries—Blackstone in the eighteenth century, Hale and Coke in the seventeenth, Fitzherbert in the sixteenth, Littleton in the fifteenth, Bracton in the thirteenth, and Glanvil in the twelfth—and find that, although hardly a rule runs all the way through without receiving slants in new directions, one is always reading about the same great body of law. "Eventful though its life has been, it has had but a single life." And this suggests a third important characteristic, namely, that while no system of law, so long as it continues in operation, is ever wholly static, English law is preeminently a living, changing thing, dropping off here and taking on there, precisely as is true of those rules and usages of public law which we know as the constitution. "When we speak of a body of law," reads the opening sentence of a well-known history of the English system, "we use a metaphor so apt that it is hardly a metaphor. We picture to ourselves a being that lives and grows, that preserves its identity while every atom of which it is composed is

[1] This is no doubt one of the reasons why peoples like the Japanese, Chinese, and Turks who have set out to copy extensively from European law have usually turned to the French, German, Swiss, or Italian systems rather than the English. For purposes of imitation, the latter is somewhat baffling and inconvenient.

subject to a ceaseless process of change, decay, and renewal."[1] The law is not an amorphous lump or mass; it is an organism.

RISE OF THE COMMON LAW

In origin and content, the law as it stands today consists of two main elements, common law and statute—to which must be added a third, on a somewhat different basis of classification, *i.e.*, equity. The rise and expansion of the common law forms one of the most interesting chapters in all legal history. The story goes back to the Saxon period, when, notwithstanding the primitive aspect of the times (including the lack of national unity) certain legal usages and forms gained acceptance throughout the realm, or at all events the larger portion of it. Growing up in unwritten form, these customs were in part, from time to time, promulgated, or declared, as "dooms," or ordinances, by the king and his witan; although it was always characteristic of the common law, as it is today, that much of it was simply carried in men's minds without being written down, at any rate in any orderly manner. After the Conquest, the displacement of local and diverse legal usages by customs general to the entire country went on at an accelerated pace, especially in the reigns of Henry II (1154-89) and his immediate successors. These were days of strong royal rule, when the king's government was reaching out in all directions for greater power, and, in particular, was establishing centralized control over the all-important domains of finance and justice. Feudal and other local courts gave way to king's courts, conducted by royal judges—often men of genuine learning—who went out from London to all parts of the realm and dispensed justice in the king's name. Drawing their authority from a single source, forming a homogeneous staff, and continuously interchanging information and ideas, these royal judges sought to discover and apply the usages having the widest vogue. The decisions of one became precedents to be followed by others; and thus, woven of reiterated and respected judgments after the principle known to lawyers as *stare decisis*,[2] the common law developed into the great fabric of legal usage which, even by the thirteenth century, had come to be one of the country's major claims to distinction. It was a body of rules formulated by judges—rules which, for the most part, had never been ordained by a king, or, of course, enacted by a legislature. Yet it had the royal authority behind it and was in every proper sense law, applied wher-

[1] F. W. Maitland and F. C Montague, *Sketch of English Legal History* (New York, 1915), 1.

[2] That is, the principle that the decision of a court sets up a presumptive basis of action in all analogous cases subsequently arising, especially when the same decision has been repeatedly made or affirmed over a long period of time

ever the king's courts were held—which by the close of the Norman period meant every part of the land. Very different was the situation in France, where (partly because of the relative weakness of the central government in the earlier Middle Ages) elaborate bodies of local customary law arose, but nothing of the kind for the country as a whole, and where, indeed, law continued fundamentally regional rather than national until near the end of the eighteenth century.

CONTRIBUTIONS OF THE COMMENTATORS

Other factors, of course, entered into the making of the great system of common law as handed down to modern times. In addition to contributions from Roman law, canon law, and the law merchant, a good deal was added by jurists and commentators Sooner or later, legal-minded scholars were bound to find in the vast unassembled mass of principles and procedures a challenge to legal reporting and interpretation. As early as the twelfth century, Henry II's chief justiciar, Ranulf Glanvil, compiled a "Treatise on the Laws and Customs of the Kingdom of England" (*Tractatus de Legibus et Consuetudinibus Regni*); and in succeeding centuries a long line of other jurists—leading up to Blackstone, author of the famous *Commentaries on the Laws of England*, in the eighteenth—gathered up the significant rules of common law that had developed by the time that each, respectively, wrote, commented on them, cited cases on which they were based, and thus helped both to systematize the law and to shape the lines of its future development.

THE COMMON LAW BEYOND SEAS

Meanwhile the law kept on expanding steadily—finding a new application here and building out in a new direction there—as, indeed, it continues to do in our own time. There was never a break in its history; political revolutions only left it more strongly entrenched than before Furthermore, when, in the seventeenth and eighteenth centuries, Englishmen began settling beyond seas, they carried the common law with them as perhaps their most priceless possession. To the colonists in America, it was an Englishman's heritage, a bulwark against tyranny, a guarantee of liberties and rights—so precious, indeed, that the sturdy patriots who composed the First Continental Congress solemnly asserted Americans to be "entitled to it by the immutable laws of nature." After the Revolution, it was no less prized than before, and, next only to language, it is no doubt today the most important common possession of the United States and the mother land. For Englishmen themselves, it has been the basic law of the realm from a day so remote that "the memory of man runneth not to the contrary." It still flows with pomp of waters

unwithstood through all tribunals where the English language is the language of the people.

STATUTE LAW AND ITS RELATION TO COMMON LAW

During all of the time, however, while the common law was taking form, other law was coming into being by a different process, *i.e.*, by enactment. Common law merely grew up; statute law was *made*. For many centuries, the king promulgated laws with only the advice and assistance of his council. After the rise of Parliament, however, laws gradually took the form, instead, of statutes adopted by the two chambers—even though to this day they describe themselves as enacted by the "*king*, Lords, and Commons in parliament assembled." It is now more than 600 years since Parliament began grinding out laws. Until a century or two ago, the product was of no great bulk; even now, Englishmen indulge in no orgies of law-making comparable with those which fatten the statute-books in America. Changing social and economic conditions since the middle of the eighteenth century have, however, called for freer exercise of the legislative power, and for a long time now a substantial volume has been added every year to the General Public Acts (formerly known as the Statutes of the Realm), single laws not infrequently exceeding in bulk the entire legislative output of a mediaeval reign. Some of this statutory law deals with matters not covered at all by the common law. But a large share of it has to do with subjects that are so covered, at least in part; and hence the common law is constantly being not only supplemented by statute, but rounded out, clarified, codified, amended, or even repealed by it, as the case may be. For, treasured as the common law undoubtedly is, it enjoys no privilege or immunity as against Parliament; any of its principles or rules may at any time be turned by that body in a different direction or set aside altogether. Furthermore, when common law and statute conflict, statute always prevails; and no new development of common law can ever annul a statute.

COMMON LAW STILL THE MORE FUNDAMENTAL

All this would, however, give a totally false impression unless one hastened to add that by far the greater part of the law (especially civil, as distinguished from criminal, law) which the courts are called upon to enforce, in England and America alike, is common law; and so far as one can see, this will always be true.[1]

[1] Rather less of the common law survives in our American states than in Great Britain, mainly because of the immoderate output of our legislatures. The situation is, of course, not the same in all states. Much pressure is constantly being brought to bear upon law-makers to displace old and established rules of common law, which are alleged to be outworn, with legislation on different lines.

The common law is still the "tough legal fabric that envelops us all"; the statutes are hardly more than ornaments and trimmings. "The statutes," says an English writer, "assume the existence of the common law; they would have no meaning except by reference to the common law. If all the statutes of the realm were repealed, we should still have a system of law, though, it may be, an unworkable one; if we could imagine the common law swept away and the statute law preserved, we should have only disjointed rules torn from their context, and no provision at all for many of the most important relations of life."[1] Thus, no act of Parliament enjoins in general terms that a man shall pay his debts, or carry out his contracts, or pay damages on being convicted of trespass or slander. Statutes do, indeed, have a good deal to say about how these obligations shall be discharged; but the obligations themselves are imposed only by common law.

WHERE THE COMMON LAW IS TO BE FOUND

Statute law, of course, invariably takes written form, and the acts of Parliament are to be found in imposing printed collections—the General Public Acts—to which, as we have seen, a fresh volume is added every year. But where shall one look for the common law? It grew up in unwritten form, and to this day there is no single code in which it is assembled, no text setting it forth in a comprehensive and authoritative way. This, however, does not mean that it cannot be taken down from a shelf and read, because in one way or another practically all parts of it have now found their way into writing or print. The main source of it has been, of course, the decisions of judges, and ever since the reign of Edward I these have been "reported," *i.e.*, recorded in writing—for 200 years by lawyers who reported anonymously in the Year Books, and afterwards by others who reported under their own names in the Law Reports. Of almost equal importance, as has been indicated, are the works of learned jurists, commenting on the principles of the law and citing the cases from which they were derived or by which they were sustained. Of some importance, too, are the reported decisions of courts in other countries in which a system of law derived from the English is administered, such decisions naturally not having quite the weight of those handed down in England, but yet occasionally proving very influential. In one way or another, the common law therefore turns out not to be unwritten law, except in the sense that it was never textually enacted as is a statute. Some small branches of it have, indeed, been codified and given statutory form, among

[1] W. M. Geldart, *Elements of English Law* (London, 1912), 9

mised. Precisely as the itinerant justices originally went out through the country deciding cases individually on their merits, but gradually developed rules of common law according to which cases of similar nature were regularly decided in the same way, so those who dispensed justice in the chancery built up accepted rules of equity. Equity is case law, equally with the common law, indeed it is a species of common law—a sort of supplement or appendix to the common law, "filling up its defects, correcting abuses in the conduct of persons who resorted to it for fraudulent or oppressive purposes, and actually, though with caution, setting itself up as a rival to the common law courts by offering superior remedies, even in cases in which the common law professed to afford relief."[1] Beginning on relatively simple lines, it broadened out in time into a vast system of principles, rules, precedents, and implications, so intricate that a lawyer had to devote much hard study to the subject if he wanted to practice in an equity tribunal. In fact, at one time (chiefly the sixteenth century), equity waxed so important as to threaten the supremacy, if not the very existence, of the common law. It is still a huge body of living law, the theme of ponderous textbooks, a subject for courses in law schools, the chosen domain of many a specialist in legal practice. It shows somewhat more influence of Roman legal principles than does the common law; it has a procedure largely its own, and although no longer administered in Britain in tribunals separate from the common law courts,[2] it is as distinct a body of law as it ever was.

3 RELATION TO OTHER PARTS OF THE LAW

If it be asked what the relation of equity now is to the rest of the law, the answer is: first, that it has no relation at all to the criminal law, being confined strictly to civil controversies; second, that it is employed invariably in certain kinds of civil cases, *e.g.*, those arising out of the administration of property by a trustee; third, that the great bulk of other civil cases are dealt with normally under the rules of common or statute law rather than under those of equity, the latter being appealed to, if at all, only with a view to correcting alleged omissions or injustices of the regular law courts, and fourth, that in several kinds of cases redress may be sought either at law or in equity as the plaintiff prefers.[3]

[1] E. Jenks, *The Book of English Law* (London, 1928), 41–42.

[2] See p. 333 below.

[3] The standard history of earlier English legal development is F. Pollock and F. W. Maitland, *History of English Law to the Time of Edward I*, 2 vols (Cambridge, 1898). An equally notable work, covering practically the entire field chronologically, is W. S. Holdsworth, *History of English Law*, 12 vols (2nd ed., London.

GENERAL FEATURES OF THE COURTS:

1. NO SINGLE SYSTEM THROUGHOUT THE UNITED KINGDOM

Turning to the judicial machinery through which the law is administered, one discovers, first of all, that no single form of organization prevails throughout the United Kingdom, still less throughout the British Isles or the Empire at large. On the contrary, there is one scheme of courts in England and Wales, another in Scotland, and still another (although more like the English than is the Scottish) in Northern Ireland—not to mention still a different one in the region once belonging to the United Kingdom but now forming the almost independent jurisdiction known as Eire. Except as otherwise indicated, the system of courts described in the following pages is that of England and Wales alone.

2. ABSENCE OF ADMINISTRATIVE COURTS

In the second place, there is in England no separate set of administrative courts such as parallels the hierarchy of ordinary courts in France, Italy, and other Continental countries. There is, to be sure, administrative law; that is to say, there are accepted principles and usages which apply in fixing relationships and settling disputes between administrative officers (acting in their public capacity) on the one hand and private individuals or corporations on the other. But whereas most Continental states maintain numerous separate courts for the handling of cases in which law of this type is applied, neither England nor any other English-speaking land has more than an occasional tribunal of the kind. In these countries, cases turning upon the validity of acts of government officials go normally to the same courts as cases of other sorts. An Englishman and a Frenchman are capable of debating from morn till eve the relative advantages of the two plans. The Frenchman will say that the dignity and authority of the government require that its officers shall not be haled into the ordinary courts—that whether it be in the instance of

1922–38). The first volume of this great treatise contains a history of English courts from the Conquest to the present day, the other volumes deal exhaustively with the development of legal doctrine and the general history of the law. Three excellent introductions to both the history and content of the law are E Jenks, *The Book of English Law; As at the End of the Year 1931* (3rd ed, London, 1932), W. M. Geldart, *Elements of English Law* (London, 1912), and H. Potter, *An Historical Introduction to the English Law and Its Institutions* (London, 1933); and a scholarly and convenient brief survey is E. M. Sait, *Political Institutions; A Preface* (New York, 1938), Chaps xi–xii. Other useful books include T. F. T Plucknett, *A Concise History of the Common Law* (Rochester, 1929), R. Pound, *The Spirit of the Common Law* (Boston, 1921); C. K Allen, *Law in the Making* (rev. ed, Oxford, 1930), and E. Parry, *The Drama of the Law* (London, 1929). E. Jenks, *The New Jurisprudence* (London, 1933), is an informing and stimulating volume.

a prefect who exceeds his powers by closing a factory because of unsanitary conditions or in that of a policeman who, pursuing an offender, injures an innocent bystander, the resulting dispute should be heard and adjusted by a tribunal under the control of the administrative, rather than the judicial, arm of the government, and by a procedure differing in various respects from that employed in the regular courts. The Englishman will boast that it is a token of liberty for the citizen to be able to cause public officials—any public official, indeed, except the king himself—to be summoned before the ordinary courts, and will suggest that in a French administrative court, composed exclusively of persons connected with the administrative branch of the government, a plaintiff must surely find it difficult to get a sympathetic hearing of his grievance. To this the Frenchman will reply (quite correctly) that as a matter of actual experience the administrative tribunals on one side of the Channel render judgments against the government quite as freely as do the ordinary courts on the other side, and that—and, from a practical point of view, this is a decidedly important matter—if a plaintiff receives an award of damages under the French system, the judgment is against the government, and will always be carried out, whereas an award rendered under the English system is only against the offending official personally, from whom, likely as not, it will prove impossible to obtain actual redress. Each plan, of course, has its advantages; and it should be noted not only that in both England and the United States there has been a growing tendency to delegate power to settle disputes to administrative agencies such as the Ministry of Health in the one country and the Federal Trade Commission in the other, but also that the Continental plan is nowadays regarded a good deal more tolerantly throughout the English-speaking world than a generation ago.[1] Whatever this may lead to in the future, however, the fact remains that as yet administrative courts hold no important place in England's judicial equipment.

3. INTEGRATION OF THE COURTS IN ENGLAND AND WALES

A third main feature of the judicial system under review is the unity found in the scheme of ordinary courts. Such a situation did not always prevail. Two generations ago, the country was cluttered up with unrelated, overlapping, and sometimes relatively

[1] This change is well illustrated by the admission of Dicey, in the 8th edition of his *Law of the Constitution* (London, 1915), that the hostile opinions expressed in earlier editions of his book were based on misinformation. On the administrative courts of France, see pp 572–577, and of Germany, p 768 below. The pros and cons of the administrative-court system are summarized conveniently in J. W. Garner, *Political Science and Government*, 785–791.

useless tribunals—civil courts and criminal courts, courts of equity and courts of common law, probate courts, divorce courts, ecclesiastical courts, and what not. All sorts of trouble resulted. Cases multiplied in which it was difficult to determine which court had jurisdiction; each type of tribunal had its peculiar forms of practice and procedure; even the trained lawyer threaded his way through the maze with difficulty. Reform proved difficult; but eventually—mainly between 1873 and 1876—it was accomplished on thoroughgoing lines. Practically all of the courts except those of the local magistrates, *i.e.*, the justices of the peace, were brought together in a single centralized system. Tribunals which had been separate, and indeed rivals, became branches or subdivisions of a single Supreme Court of Judicature; law and equity jurisdictions were combined in the same courts; the lines of appeal, on both law and fact, were laid down more definitely; the fitness of the House of Lords for its judicial duties was enhanced by the addition of specially appointed lords of appeal in ordinary; the work of justice in all of its phases and branches was toned up and reënforced. Under the administrative direction of the Lord Chancellor, the Supreme Court of Judicature—divided into (1) a Court of Appeal and (2) a High Court of Justice, the latter organized in three divisions, (a) Chancery, (b) King's (or Queen's) Bench, and (c) Probate, Divorce, and Admiralty—was to perform combined appellate and trial functions (in both civil and criminal cases) which in other lands occupy a much larger number of tribunals.[1] Beneath this Supreme Court, a set of so-called county courts dating from 1846 was assigned the duty of taking care of civil actions, and similarly a series of "assize" courts (presided over by travelling judges sent out from the High Court at London) was given the task of hearing and deciding criminal cases. At the top, the House of Lords, after temporarily losing its judicial functions altogether, became again the court of last resort for the hearing of appeals on questions of law from the highest tribunals of both civil and criminal jurisdiction. So effective did the new arrangements prove that few changes, and none of a really fundamental nature, have been found necessary in the last 60 years.

CIVIL ACTIONS: For practical purposes, all cases that come before the courts may be classed as either civil or criminal. A civil action is a proceeding brought by a private citizen, or by an official in his private capacity, usually to obtain redress from

[1] The "Supreme Court of Judicature" is merely a covering name. For certain purposes, the judges identified with it, *i.e.*, those of the Court of Appeal and of the High Court of Justice, form collectively a Judicial Council, but they never sit as a "Supreme Court."

another person, official or private, for a "tort," or wrong—slander, trespass, fraud, breach of contract, infringement of patents, and the like—alleged to have been committed against the bringer of the action, or "plaintiff," by the person against whom the action is brought, or "defendant." In such a proceeding, the dispute is not between crown and subject (as it normally is in a criminal action), but between one of the crown's subjects and another; and the function of the public authorities is merely to judge, *i.e.*, to determine the merits of the controversy. The parties may at any time agree to give up litigation and reach a settlement out of court, a thing which can never be done in criminal proceedings.

1. IN THE COUNTY COURTS

The court in which a civil action will be brought depends mainly on the amount of the claim. If the sum is less than £500, the suit will probably be instituted in a county court. The so-called county courts of the present day, established by act of Parliament in 1846, are, however, in reality no part of the organization of either the "historic" or the "administrative" counties,[1] and the areas of their jurisdiction are districts which not only are smaller than counties but bear no relation to any such units. There are in England and Wales at present some 500 of these districts, each with its own "court house"; and to each of 55 circuits into which the districts are grouped the Lord Chancellor assigns one judge, who holds court in each district of his circuit periodically, in some instances as often as once a month. Notwithstanding that Englishmen are reputed to be less litigious than most other peoples, the volume of business to be transacted is indeed formidable, no fewer than a million and a quarter cases are docketed every year. Only a few of the most important, however, are actually handled by the judges personally. In every place where a county court sits, an official known as a "register" is in charge of records; and to him it falls to dispose of the great majority of cases by persuading plaintiffs to abandon their suits or by effecting other adjustments making it unnecessary for cases to be heard by the judges at all.

Procedure in a county court is simple, both plaintiff and defendant frequently conducting their cases themselves. Where the amount in dispute exceeds £5, either party may demand a jury (which for this purpose consists of eight persons), but this is rarely done. Where there is a jury, it finds a verdict on the facts proved, under the direction of the judge; where there is none, the judge decides on the facts and on the law; and in either case he gives a judgment for the

[1] See p. 351 below.

plaintiff or the defendant, which is enforced by seizure of the property of the party who fails to obey it, or even by imprisonment. The object of civil proceedings is, however, compensation, not punishment as in the case of crime. On a point of law, an appeal can be taken to a "divisional sitting" [1] of the High Court of Justice, although no farther without leave of the latter or of the Court of Appeal. On matters of fact, there is technically no appeal from the verdict of a jury. An application may be, and often is, made, however, to a divisional court to order a new trial on the ground that the judge instructed the jury wrongly, or that the jury's verdict was not supported by the evidence before it.[2]

2. IN THE HIGHER COURTS

Where the plaintiff's claim exceeds the jurisdiction of the county court, he must, and, even if it does not, he may, bring his action first of all in the appropriate branch of the High Court of Justice—that is to say, in the Chancery division, the King's Bench division, or the Probate, Divorce, and Admiralty division, whence appeal lies to the Court of Appeal. Technically, there is no such appeal on questions of fact; but here again an application may be made—to the Court of Appeal, of course—to order a new trial. Beyond the Court of Appeal, the dissatisfied litigant has still one more appeal on questions of law, *i.e*, to the House of Lords, provided he can stand the delay and expense.

CRIMINAL ACTIONS:

A criminal case is one in which a person alleged to have committed an offense, such as murder, theft, or forgery, is proceeded against in order that, if found guilty, he may be punished. As a rule, such a case arises out of a complaint by a private individual or an arrest by a police officer; and it may be conducted—that is to say, the accused may be "prosecuted"—either by a public official, such as the Director of Public Prosecutions, or by a private person.[3] In any event, the proceeding is carried on in the name of the crown and involves four distinct steps or processes. First, there must be a definite accusation by a person who professes to know of the commission of the offense. Then there must be proof of the facts. After that, there must be an authoritative statement of

[1] That is, a sitting participated in by only a portion of the judges.

[2] On the county courts, see R. Rosenbaum, "Studies in English Civil Procedure; The County Courts," in *Pa. Law Rev*, Feb., Mar., Apr., 1916, and *Report of the Lord Chancellor's Committee on the County Courts*, Cmd. 431 (1919). In R K Gooch, *Source Book*, 366–381, will be found large portions of a County Courts Act of 1934 which in effect codified existing law relating to these tribunals

[3] Following Continental usage, all criminal prosecutions in the United States are carried on by public prosecutors, such as district or state's attorneys.

the rule which the offender is alleged to have broken. Finally, if the offense is proved, there must be condemnation and punishment. In primitive forms of justice, all of these steps are likely to be taken by the same person. The avenger is accuser, witness, judge, and executioner in one. In civilized justice, however, it is axiomatic that the several steps shall not only be separated in time, but taken by different persons.[1]

1. BEFORE THE JUSTICES OF THE PEACE

When a person is accused of having committed a criminal offense, he is formally summoned, or arrested and brought, first of all before one or more justices of the peace, or, in London and the larger boroughs, before a justice of special type, known as "stipendiary" magistrate because, unlike an ordinary justice, he receives a salary. Dating from the early fourteenth century, the office of justice of the peace has played a very important rôle in the development both of local administration and of justice. "The whole Christian world," declared Coke, "hath not the like office, if truly executed." The normal area of jurisdiction of the justices is the "historic" county, although certain boroughs have also a "commission of the peace"; and aside from a few persons who attain the office on an *ex officio* basis, the justices in any given county are appointed "at the pleasure of the crown" by the Lord Chancellor, usually on recommendation of the lord lieutenant of the county, who himself is chief of the justices and keeper of the county records. In many counties, the list of justices contains 300 to 400 names, in Lancashire, it reaches beyond 800; and the number in the country as a whole is hardly short of 20,000. But almost half of the appointees never take the oath required to qualify them for magisterial service, and the actual work is performed in each county by a comparatively small number of persons. As has been indicated, the justices serve without pay; but the office carries a good deal of local prestige, and appointments are widely sought. Formerly, the justices were, in the main, country gentlemen; but men (and, since 1919, women also) are now appointed freely from all professions and social classes, with

[1] To be sure, the government appears to be, and as a rule in the last analysis is, both prosecutor and judge, and throughout a great portion of the history of criminal justice in England the scales were on that account heavily weighted against the accused. The difficulty has in modern times been got around, however, (1) by arrangements under which the government's (technically, the king's) functions in the two capacities are performed by entirely different sets of officials—by the "law officers of the crown" and other public prosecutors in the one instance, and by "His Majesty's judges" in the other, and (2) by provisions (especially of the Act of Settlement of 1701) protecting the judges against arbitrary removal and against reductions of salary.

the result that the magistracy is far less aristocratic than even a generation ago.[1]

When the accused is brought before the "J. P.," that official can himself dispose of the case if the offense is a minor one, *e.g.*, neglecting to take out a license or riding a bicycle after dark without a light. But he cannot impose a higher penalty than 20 shillings or sentence to imprisonment for more than 14 days. If the offense is of a more serious nature, the justice's duty is, in the first place, merely to see whether there is a *prima facie* case against the accused. For this purpose, he hears the evidence, usually sworn testimony, of the prosecutor and his witnesses. There is no jury, and the accused need not make any statement or offer any defense unless he likes. If, after the hearing, the justice feels that no *prima facie* case has been made out, *i.e.*, that no jury would convict even if the prosecutor's evidence were unchallenged, he dismisses the charge, and the accused goes free. If, however, he thinks that a *prima facie* case has been established, he "commits the prisoner for trial," and decides whether to let him out on bail or to have him confined to await further proceedings.

The court in which the trial will take place is determined mainly by the seriousness of the case. A large and increasing number of offenses, including petty assaults and thefts, small breaches of public order, and other minor misdemeanors—and even graver offenses if the accused wishes, or if it is a first charge, or if he is under age—are "punishable on summary conviction." The court of summary conviction is composed of at least two justices of the peace (usually resident in the immediate neighborhood), and is known as "petty sessions." The trial is public and without a jury, and the accused is given full opportunity to be heard and to have the benefit of counsel. If the court finds the man guilty, it imposes a fine or a limited period of imprisonment. He may, however, appeal to "quarter sessions," which consists of all the justices in the county (meeting quarterly) who have taken the oath and who care to go to the trouble of attending. Here his case will be heard again from beginning to end.

2. IN THE ASSIZE COURTS

In graver cases, the accused is proceeded against by formal "indictment," or written statement charging him with a definite crime committed in a particular way; and he is entitled to a copy of this indictment

[1] C. A. Beard, "The Office of Justice of the Peace in England," *Columbia Univ. Studies in Hist, Econ, and Public Law*, No 1 (New York, 1904). The office of justice of the peace has fallen to so low an estate in the United States that most authorities are agreed that it ought to be abolished

before his trial.[1] An indictment case is tried either before quarter sessions or "at assizes," assize courts being held three times a year in all counties and four times in certain cities, and presided over normally by a judge of the High Court of Justice who goes out "on circuit" for the purpose and is still received in every town which he visits by a procession of officials headed by halberdiers and trumpeters. Wherever the trial takes place, the accused is entitled to have his fate decided by a jury of 12 of his countrymen, chosen at random by the sheriff from a list of householders compiled by the local authorities, and he has an almost unlimited privilege of "challenging," *i.e.*, objecting to, the jurors selected. It is the business of the judge (or judges) throughout the trial to see that the rules of procedure and evidence are followed; and after counsel for both sides have completed the examination of witnesses and have addressed the jury, the presiding judge sums up the case and gives the jurors any instructions about the law that he may deem necessary to enable them to arrive at a just verdict on the facts. If the jury finds the prisoner not guilty, he is forthwith discharged, and he can never again be tried on the same accusation. If, on the other hand, it finds him guilty, the judge pronounces sentence. If the jury cannot agree, there may be a new trial, with a different set of jurors.

3. CRIMINAL APPEALS

Formerly there was no appeal from the verdict of a jury in a criminal trial, although appeal lay to the House of Lords on points of law. An act of 1907, however, set up a Court of Criminal Appeal consisting of not fewer than three judges of the King's Bench, and a convicted person may now, as a matter of right, appeal to this tribunal on any question of law, and (with the permission either of the trial judge or of the Court of Criminal Appeal itself) on any question of fact, in order to establish whether the verdict of the jury was justified by the evidence. If the appellate court thinks that there has been a serious miscarriage of justice, it can modify the sentence, or even quash the conviction altogether. There can be no appeal beyond the Court of Criminal Appeal, except in rare instances to the House of Lords upon a point of law which the Attorney-General certifies to be of public importance. Under no circumstances can the prosecutor appeal.[2]

[1] Formerly, indictments were commonly returned by grand juries, as is still the usual practice in the United States. In England, however, Parliament abolished the grand jury in 1933, and indictments are now prepared by prosecutors' clerks.

[2] Standard accounts of English criminal justice include G. G. Alexander, *The Administration of Justice in Criminal Matters* (Cambridge, 1915), and P. Howard, *Criminal Justice in England* (New York, 1931). The latter is especially valuable

THE HOUSE OF LORDS AS A COURT

A word is in order about the House of Lords as a court. That body no longer possesses any right of original jurisdiction, except in the very rare instances in which members are accused of treason or felony and in cases relating to the inheritance and tenure of peerages; and appeals from ecclesiastical courts and from courts in India, the dominions, and the colonies are addressed to the crown and handled by the judicial committee of the privy council.[1] Within limits previously indicated, however, both civil and criminal cases may be appealed to the House of Lords from the highest tribunals of England, Wales, and Northern Ireland, and also civil cases from those of Scotland. So far as the formal rules go, one member of the chamber has as much right to participate in judicial business as another. A sitting of the judicial members is technically a sitting of the House; the forms of procedure are mainly those of a legislature, and not of a court; and all actions are entered in the journal as part of the chamber's proceedings. Custom now nearly a century old, however, although permitting visitors to look on from the galleries as during legislative sittings, decrees that no persons except the Lord Chancellor, the seven lords of appeal in ordinary, and such other members as hold, or have held, high judicial office may participate in any judicial sitting. This group, or any three of them, may hear cases and pronounce judgments at any time, regardless of whether Parliament is in session;[2] and from such judgments there is no appeal, although, of course, they may be—but rarely are—in effect set aside by later parliamentary legislation on lines different from those followed in the decisions.[3]

for comparison of English and American methods. Of value, too, is R. C. K Ensor, *Courts and Judges of France, Germany, and England* (Oxford, 1933).

[1] This body, although closely related to the judicial system, is not strictly a court and will be dealt with at a later point in connection with imperial organization and relations. See pp. 384, 391–392 below.

[2] Cases are usually heard by divisions, or panels, of three or five. On the procedure followed, see M. MacDonagh, *The Pageant of Parliament*, II, 78–86 (cf. N. L. Hill and H W. Stoke, *op cit.*, 209–214).

[3] A good example of a House of Lords decision subsequently overridden in part by an act of Parliament is the Trade Unions and Trades Disputes Act of 1906 exempting trade unions from legal liabilities to which they were declared subject in the Taff Vale decision of 1901. Another is the Trade Union Act of 1913 legalizing (with certain qualifications) political uses of trade-union funds which the House of Lords, in the Osborne Judgment of 1909, had held improper. See F. A. Ogg and W R. Sharp, *Economic Development of Modern Europe*, 412–418. It should be observed, of course, that the enactment of such subsequent legislation does not necessarily mean that the House of Lords has decided wrongly under the law existing at the time It may mean only that a parliamentary majority, finding that the law, when tested in the highest court, has certain consequences, has concluded that the law itself ought to be changed

JUDICIAL REVIEW AND JUDGE-MADE LAW

From county court and assize court to House of Lords, no English tribunal wields the power of judicial review on lines with which we are familiar in the United States. Orders-in-council and orders and rules of administrative authorities may indeed be scrutinized to ascertain whether they are *ultra vires*, and no court which finds them so will enforce them. But they are only a species of "subordinate" legislation, which naturally can be valid only in so far as they harmonize with superior law. As for any act of Parliament, it is *ipso facto* law, to be accepted at face value and enforced as long as, and in so far as, it is not rescinded by later statute. British courts are therefore relieved of a burden of constitutional construction which rests heavily upon our higher tribunals in the United States. Of course they cannot escape the frequently difficult and delicate task of interpreting the law in the sense of determining what it means. Courts everywhere must do this; and in doing it, British courts, in common with American, French, and other courts, declare and in effect make law. What did Parliament intend by a given phrase or clause? How should a pertinent act be applied to a situation which Parliament obviously did not envisage or expect to arise? What—if there is no statutory provision at all upon which to fall back—is the common law relating to the matter? In all such instances, it is for the judges to say. Some English, as well as foreign, authorities, shrink from the conclusion that judges actually make law. They prefer to speak of them as only "discovering" it. Dicey truly remarks, however, that while an English judge is primarily an interpreter, and not a maker, of law, he does, by interpretation, make law and it is immaterial whether we call such law "judge-made" or something else.[1] As was pointed out earlier in the present chapter, the great body of English law took form, and has at all stages been expanded and developed, largely at the hands of the judiciary. From one end of the land to the other, judges are still refashioning the fabric just as truly as, even though by somewhat subtler methods than, Parliament itself.

REASONS FOR THE HIGH QUALITY OF BRITISH JUSTICE:

The British system of justice, both civil and criminal, deservedly enjoys an enviable reputation, both at home and abroad, for fairness, sureness, stability, and dignity. Foreign—especially American—lawyers and judges who go to England to observe its workings at close range rarely fail to return home full of admiration for what they have seen. There are other judicial systems, *e.g.*, in

[1] *Law and Public Opinion in England*, 359, note 2.

France, which rest upon quite different principles, and for which much may be said. As systems developed by and for peoples with different backgrounds and ideas, they may be fully as defensible as the British. But if other evidence were lacking, the inherent excellence of the British system would be demonstrated by the close study given it, and the large borrowings made from it, by peoples in many lands, the world over, who have found themselves confronted with the task of recasting and modernizing their inherited judicial institutions.

The explanation is to be found in three main phases or aspects of the system. The first has to do with certain broad principles in accordance with which all justice is administered, the second with the rules of procedure observed in the courts, and the third with the quality of bench and bar. A word must be said about each of these three matters.

I. FUNDAMENTAL PRINCIPLES FOLLOWED

Of underlying principles, some relate to the administration of justice generally, others to criminal justice particularly, and still others especially to civil justice. As summarized by an eminent English legal authority,[1] the principles or practices most generally adhered to are: 1. Cases are tried, not behind closed doors, but in open court to which the public has free access. 2. Both parties to a proceeding have a right to be represented by counsel, and to have their respective sides heard by judge and jury. Under some other judicial systems, the accused, in criminal cases, is not necessarily entitled to be represented by skilled advisers. 3. The burden of proof rests, in almost every type of case, civil or criminal, on the accuser. 4. Guilt or innocence is established in accordance with an extensive body of accepted rules and maxims constituting "the law of evidence." 5. In all serious criminal cases, the accused must be tried, not by a judge alone, but by a jury; and in civil cases involving an accusation against the moral character of either of the parties, that party may, if he desires, demand a jury verdict. 6. Judgment is rendered in open court, and (at least in the intermediate and higher courts) the judge or judges give the reasons for it. 7. In effect, if not in name, there is, in substantially all legal proceedings, at least one appeal to a higher tribunal from the decision of a court of first instance on a matter of law, and to a very large extent on matters of fact, so that the accused person, or, in civil cases, either party, has the right to submit his case to the judgment of at least two tribunals, acting independently of each other.

[1] E. Jenks, *The Book of English Law*, Chap. vii.

2. RULES OF PROCEDURE

Not only do English courts operate under salutary principles such as those enumerated, but they are favorably situated in the matter of rules of procedure. In the United States, the rules governing pleading, evidence, and all other aspects of court procedure emanate mainly—in many states almost entirely—from legislative bodies, not from the courts themselves. This means that they are made by men who not only lack judicial experience, but in many instances are not even lawyers, at all events of large experience and ability. The results are often deplorable, and a movement is slowly gaining momentum for a change to court-made rules.[1] In England, procedure was originally governed solely by the custom of the individual tribunal, and for hundreds of years changes were made only as a result of practice or of court-made rules, with Parliament occasionally intervening to create new remedial rights or to cut off old procedural abuses. In the nineteenth century, public disapproval of certain features of existing procedure found expression in a series of reform statutes, culminating in the Judicature Act of 1873 which vested the rule-making power in a rules committee consisting of the Lord Chancellor, seven other important judges, and four practicing lawyers—a decidedly expert body representing, it will be observed, both bench and bar. This arrangement has proved in every respect satisfactory. To be sure, all new and revised rules must still be laid before Parliament, which, if it likes, may disallow them. But in point of fact the committee's work has been so well performed that not once has a parliamentary veto been interposed.

The outstanding characteristics of the procedure developed by this means are its expeditiousness, its indifference to mere technicalities, its emphasis upon the maintenance of an unobstructed road to substantial justice. The rules repose solidly on the principle that every action should proceed promptly to a decision, and that the parties ought never to be turned out of court because of some error in practice or procedure which in no way involves the merits of the controversy. "The relation of rules of practice to the work of justice," says a well-known English judge, "is intended to be that of handmaid rather than mistress, and the court ought not to be so far bound and tied by rules, which are after all intended only as general rules of procedure, as to be compelled to do what will cause injustice in a particular case." Herein is to be found the reason why less than one-half of one per cent of all cases are decided upon appeal on

[1] A leader in this effort is the American Judicature Society, in whose *Journal* will be found much illuminating discussion of the subject.

questions of practice and procedure. In the American states, a great deal of trouble, with plenty of accompanying injustice, arises not only from the pettifogging tactics of lawyers, but from rigid and misdirected rules laid down by well-meaning but inexpert legislatures. There have been jurisdictions in which as high as 50 per cent of the cases reversed on appeal were decided upon questions of practice and procedure which had nothing to do with the merits of the controversy. In England, the judge is undisputed master of his court-room, and, supported by a body of rules designed to clear the path for effective justice, he refuses to permit business to be slowed up or diverted by bickering, quibbles, and technicalities.[1] Foreign observers, accustomed to the bullying of witnesses and the vindictiveness of opposing counsel, are invariably struck by the orderliness, quiet efficiency, and general air of courtesy pervading English trials. It is, indeed, contrary to tradition for a prosecutor to exhort the jury to convict; when he has presented the evidence against the defendant, his duty is done.

3. CHARACTER OF BENCH AND BAR

Needless to say, the superior adaptation of procedure to the ends in view is a main reason why justice is both surer and speedier in England than in most other countries. The calendars of the courts do not become clogged, a murder trial will often be carried through all of its stages while an American court would still be laboring over the empanelling of a jury. But there are other favorable circumstances, connected still more directly with the character of bench and bar. English judges are, in general, of a high order of ability, independence, and integrity, and are probably held in higher esteem than the judges of any other country. One reason undoubtedly lies in the fact that the judiciary is entirely appointive; and not only the judges themselves, but court officers such as sheriffs and clerks. Not even the justices of the peace are elected. Nominated in the various counties by the lords lieutenant, the latter are appointed by the Lord Chancellor, in the name of the king; and all members of the judiciary proper—of county courts, of High Court, of Court of Appeal—owe their positions to crown appointment in pursuance of recommendations made by the same powerful official. An elective judiciary did not work well in Revolutionary France and was soon given up, and it shows plenty of defects in most of our American states. Neither England nor any part of the British Empire has ever thought it wise to permit judges to be subjected to the political hazards and

[1] See extract from an article by E. R. Sunderland, reprinted in N. L. Hill and H. W. Stoke, *op. cit.*, 203–205.

temptations that almost inevitably go along with an elective system. In France and Germany, judges are regularly appointed from among persons professionally trained for the bench. In England, as in the United States, this is not the case; judges are selected, rather, from among practicing lawyers. Under English usage, however, members of the county courts must be barristers of at least seven years' standing, which in the case of members of the High Court is increased to 10 years, and in that of members of the Court of Appeal to 15 years.

Not only are judges appointive; their independence is further promoted by protection against reduction of salary and by assurance of life tenure.[1] Removals, to be sure, can be made by the appointing authority, *i.e.*, the crown acting on advice of the Lord Chancellor. In practice, however, none take place except on joint address of the two houses of Parliament; and it is as rare a thing for a judge to be ousted from his position as it is in the national judiciary of the United States, which, in contrast with the state judiciaries, is like the English in being appointive.

Finally, judicial positions in England are made attractive by much higher salaries than are paid in Continental Europe or in the United States. Judges of the county courts, whose jurisdiction includes all of the cases tried by the ordinary justice of the peace in the United States, receive £1,500 a year, which is more than is paid to most justices in the various state supreme courts of this country; while the salaries paid in the Supreme Court of Judicature range from £5,000 for the ordinary justice of the trial and appellate branches to £8,000 for the Lord Chief Justice and £10,000 for the Lord Chancellor—double or triple the salaries of justices of corresponding grade on this side of the Atlantic.[2]

As for the bar, a useful feature is the division of labor arising from the distinction between (a) solicitors, or attorneys, who deal directly with clients and prepare cases, and (b) barristers, who are engaged by the solicitors to conduct the cases for them before the courts. Each type of lawyer becomes expert in his special kind of work, and the results are manifest both in the thoroughness with which cases are prepared and in the skill with which they are handled in the court-room. In the United States, it sometimes happens, to be sure, that certain members of a legal firm devote themselves primarily to work in the office and others mainly to appearance in court. But as a rule

[1] The legal phrase is *quamdiu se bene gesserint.*

[2] Dignity and distinction are imparted also by the practice of knighting judges when first appointed.

a lawyer tries to do both things, often—at all events in cases of a more difficult nature—to his client's disadvantage. The only objection to the English plan is that it tends to increase the expensiveness of litigation. This matter of cost to the litigant is, indeed, the principal ground on which the English system of justice is at present subjected to criticism.[1]

[1] The best treatises on the development of the English courts are W. S. Holdsworth, *History of English Law*, I, and A. T. Carter, *History of English Legal Institutions* (4th ed, London, 1910), to which may be added the latter author's briefer *History of the English Courts* (London, 1927), and F. F. Russell, *Outline of Legal History* (New York, 1929), which is virtually a summary of Holdsworth. Useful brief accounts of the courts as they now stand include A. L. Lowell, *op. cit.*, II, Chaps lvi–lx, E. Jenks, *The Book of English Law*, Chaps. v–vii, and (on comparative lines) R C. K. Ensor, *Courts and Judges of France, Germany, and England* (Oxford, 1933), and a fuller general description is C. P. Patterson. *The Administration of Justice in Great Britain* (Austin, Tex, 1936). The works of Alexander and Howard, mentioned on p. 338, note 2, above, are important; and E. A. Parry, *The Law and the Poor* (New York, 1914), and C. Chapman, *The Poor Man's Court of Justice; Twenty-Five Years as a Metropolitan Magistrate* (London, 1926), tell of the workings of the judicial system in first-hand and interesting fashion. The author of the last-mentioned book was for 20 years an English county court judge. Readable and informing also is C Mullins, *In Quest of Justice* (London, 1931), where one will find a vigorous indictment of the present expensiveness of litigation (cf N. L Hill and H. W. Stoke, *op. cit.*, 205–209) For detailed criticism of English law and justice, with proposals for improvement at various points, see a series of articles under the general title of "Essays in Law Reform" in the *Polit. Quar.*, Apr.–June, 1933, and succeeding issues.

CHAPTER XIX

Local Government and Administration

BY and large, the agencies of government that get the headlines in the newspapers and stir the liveliest popular commendation or criticism are those operating on a national rather than a local level. Even if they do not always realize it, however, the general run of citizens have no less—in fact, usually more—at stake in the government of cities, counties, and villages than in that of their country at large. After all, it is the authorities of areas such as these that spend most of the taxpayer's money and shoulder the main responsibility for protecting his life and property, safeguarding his health, and providing schools, roads, and other necessities of his everyday existence. It is in such areas, too, that people gain the electoral, legislative, administrative, and financial experience requisite to enable them to create, support, and carry on governments of national and continental proportions. In point of fact, no greater mistake can be made than to think of local government as something separate and apart. To be sure, it operates on a level of its own. But even in countries, like Great Britain, where local authorities enjoy much freedom of decision and action, national and local institutions are dovetailed together to form an integrated political and administrative structure, while under dictatorial régimes like the German and Italian, local government becomes merely a passive instrumentality through which a "totalitarian" state functions in town and countryside.

IMPORTANCE

Three main features catch the eye of even the most casual observer of local government in present-day Britain. The first is that, as would be suspected, the system is in its fundamentals rooted deeply in the past. From the days of semi-independent Saxon towns and shires, community feeling has always been strong among Englishmen, who have guarded no right more jealously than that of managing their local affairs in their own way. There is much in the spirit, and something in the machinery, of English local government today to remind one of the times of Alfred and Edward the Confessor. A second fact is that local government has, nevertheless,

THREE FUNDAMENTAL ASPECTS OF THE BRITISH SYSTEM

been progressively adapted to shifting conditions from century to century, and indeed has undergone significant changes in very recent years. Historic counties and boroughs survive, but with altered organization and functions; older units like the parish have grown decadent, new jurisdictions have been laid out, new elective bodies called into being, new administrative offices created, new methods introduced. In the third place, while local areas cling as best they can to their heritage of free civic life, their powers and functions are regulated increasingly from London, on broadly uniform lines for England and Wales, although with wide allowance for differences of historical experience in other parts of the realm. Local institutions still stand more truly on their own feet, and are more democratic, than in Continental countries, even France. But for 75 years the trend, despite vigorous protest and resistance, has inexorably been toward more control by Parliament and Whitehall; and, except for special arrangements in metropolitan London, a single pattern prevails almost as uniformly in England and Wales as in the French Republic, and far more so than in the United States, where, notwithstanding new financial and other contacts growing out of efforts to combat the recent depression, the national government still has relatively little to do with local affairs, and where wide differences of organization and function are found from state to state.[1]

LOCAL GOVERNMENT A HUNDRED YEARS AGO

At the dawn of the nineteenth century, local government in the rural sections of the country was carried on principally in counties (historically continuous in many instances with Anglo-Saxon shires) and in subdivisions known as parishes, which, starting as areas for purely ecclesiastical purposes, had taken on civil functions as well, and in doing so had, in effect, replaced the ancient townships. Urban government was carried on in boroughs, which, dating also in many cases from Anglo-Saxon times, had gradually gained autonomy as chartered municipalities. Of counties, there were 52, each with (1) a sheriff, appointed by and serving the in-

[1] The most recent works presenting a general description of the entire system are R. K Gooch, "Local Government in England," in W. Anderson (ed.), *Local Government in Europe* (New York, 1939), 3–106, J. J. Clarke, *Outlines of Local Government of the United Kingdom and the Irish Free State* (11th ed, London, 1937); H. Finer, *English Local Government* (London, 1934); and E. L Hasluck, *Local Government in England* (Cambridge, 1936), the last-mentioned being particularly readable. Briefer than Finer and Hasluck, and also excellent, are J. P R. Maud, *Local Government in Modern England* (London, 1932), W. A. Robson, *The Development of Local Government* (London, 1931), and W. I Jennings, *Local Government in the Modern Constitution* (London, 1931).

It should be noted that the present chapter deals with local government in England and Wales only

terests of the central government, (2) a lord lieutenant, similarly appointed and having charge mainly of military matters, (3) coroners, whose principal function was the investigation of sudden deaths, and, most important by far, (4) varying numbers of justices of the peace, likewise named by the central government, and as yet (until 1888) combining with their original functions of petty justice large responsibilities as local administrators (*e g.*, of highways) and as makers of local ordinances in the interest of law and order. Selected chiefly from among the lesser landholders and the rural clergy, the justices naturally had the point of view of the gentry rather than of the humbler folk of the county; and since there was no provision for a council or other elected body, county government could by no stretch of the imagination be termed democratic, even though the parish had a "parish meeting" which, in the simplest matters of neighborhood government, functioned a good deal like the New England town meeting of that day and since. Having received their charters one by one through a long stretch of centuries, the more than 200 boroughs possessed widely differing rights and powers, with often a good deal of control remaining in the counties and parishes in which they lay. Speaking broadly, however, they were self-governing areas, with authority lodged in the hands of a "corporation" consisting of the burgesses, or freemen, to which the charter had been granted. In most instances, the freemen were originally rather numerous. But by one means or another the lists had been gradually narrowed, and in the period of which we are speaking only a handful of the inhabitants were, as a rule, included. Many or few, however, the freemen chose the mayor, aldermen, and councillors by whom the affairs of the borough were managed.[1]

REFORM OF BOROUGH GOVERNMENT

The arrangements described were reasonably in keeping with political thought and habits in the eighteenth century. In the nineteenth, they failed to satisfy, and before its close they gave way to the very different system prevailing today. The first point of attack was the borough, not because borough government had been generally inferior to county government, but because the borough was naturally the unit in which new conditions arising from the Industrial Revolution first made a change of arrangements imperative. With population shift-

[1] The classic treatise on English local government prior to the reforms of the nineteenth century is S and B. Webb, *English Local Government from the Revolution* [of 1688] *to the Municipal Corporations Act*, 6 vols (London, 1906–22), of which a volume bearing the subtitle, *The Parish and the County* (London, 1906), Bk. II, Chaps. i–vi, and another entitled *The Manor and the Borough* (Pts. I and II bound separately, London, 1908) are especially pertinent.

ing unprecedentedly from country to town, new urban centers rising all over the industrialized Midlands and north, and municipalities everywhere clamoring for powers and machinery with which to meet fast-growing needs for police protection, sanitation, water supply, public lighting, and housing control, the time-honored devices of borough government simply had to be reconstructed or replaced. For a time, Parliament met the situation piecemeal by improvising special arrangements for particular municipalities. But after the reform of the House of Commons in 1832, it advanced to a more adequate solution, which, following an exhaustive investigation by a royal commission, took form in the Municipal Corporations Act of 1835.[1] Applying at the outset to 178 boroughs, this memorable measure introduced a uniform pattern of municipal government under which the powers and functions of boroughs were guaranteed and at some points extended, the "corporation" was defined as "the legal personification of the local community"; and a unified, fairly democratic, organ of government was provided for, in the form of a one-chamber council elected by the taxpayers.

REFORM OF RURAL LOCAL GOVERNMENT

The act of 1835 was epochal not only because it fixed the basis and form of municipal government from that day to this, but because in the course of time all English local government, rural as well as urban, was reorganized after the pattern which it furnished. The reform of rural government was, however, long delayed. London's government was reconstructed in 1855, and additional legislation for municipalities led to a Municipal Corporations Consolidation Act in 1882, before anything worth while was done for the counties. Indeed, conditions outside of the boroughs steadily grew worse, as county oligarchies fell into sharper contrast with parliamentary and municipal democracies, and as new local administrative units—"improvement act" districts, school-board districts, highway districts, conservancy districts, and what not—were piled on one another in an ever more confusing and wasteful jungle of jurisdictions. Perhaps the situation had to grow worse before it could grow better. At all events, it became so bad that Parliament was at last driven to act, and two great statutes—the Local Government Act of 1888 and

[1] The commission's report was published in 1835 in five volumes, the first containing the report proper, the other four the evidence on which it was based. In 1837, a separate report was submitted, dealing with the government of London, although Parliament did not get around to a reorganization of the government of the metropolis until 1855. For selected portions of the report of 1835, see T. H. Reed and P. Webbink, *Documents Illustrative of American Municipal Government* (New York, 1926), 3–29.

the District and Parish Councils Act of 1894—brought reasonable order out of chaos. This they did, not only by introducing democracy as in the boroughs, but by correlating the work of local government (outside of the boroughs) in a new set of administrative counties and in reorganized districts, rural and urban, and by "municipalizing" all of these areas, *i.e.*, providing them with the same type of council government as that given the boroughs in 1835. Since the dates mentioned, the general tendency has been to do away with minor local authorities charged with administration of particular services and to consolidate responsibility for such administration in the elective councils of the larger areas; and impetus has been supplied not only by the desire to eliminate overlapping and waste, but especially by the purpose of relieving small areas which have found themselves financially overburdened by spreading local "rating," *i.e.*, taxing, operations more equitably over larger districts. Good illustrations of this tendency are supplied by the Education Act of 1902, which abolished a set of school-board districts created in 1870 and transferred their functions to the counties and boroughs, and the Local Government Act of 1929, which, among other things, did the same for the unions of parishes that long had administered poor relief Under terms of the last-mentioned measure, indeed, the numbers of rural and urban districts were in later years reduced sharply.[1]

LOCAL GOVERNMENT AREAS TODAY

The upshot is a system of local government not quite so simple and symmetrical as that of France, but more so than that found in most of our American states, where, unhappily, a confusing and costly multiplicity of overlapping local jurisdictions still persists.[2] The six principal surviving areas are the administrative county, the county borough, the municipal borough, the urban district, the rural district, and the parish. The country is first of all divided into the 62 administrative counties created in 1888. In turn, these counties are divided into 482 less populous rural districts and 653 more populous urban ones. These districts are further subdivided into rural and urban parishes. Scattered throughout are 338 chartered boroughs, 83 of the largest being known as county boroughs because of having been endowed with practically all of the powers of an administrative

[1] A readable and illuminating review of the entire course of local-government development in Britain from the early eighteenth century to the date of publication in S. and B. Webb, *English Local Government. Statutory Authorities for Special Purposes* (London, 1922), Chaps v–vi On the reduction of the number of local areas, see J A. Fairlie, "Merge Units of Local Government in England and Wales" *Nat. Munic Rev.*, Aug., 1937.

[2] F. A. Ogg and P. O. Ray, *op. cit.* (6th ed.), Chap. I. Cf. W. Anderson, *The Units of Government in the United States* (Chicago, 1934).

county. Finally, London, like Paris, Washington, and other national capitals, has a system (administrative county, municipal boroughs, etc.) of its own. One hears of "cities"; but the term has no political significance.[1]

THE HISTORIC COUNTY

Instead of abolishing the counties that had come down through the centuries or, on the other hand, making them the basis of a new county-government system, the architects of the reform of 1888 allowed them to stand and merely superimposed on them a new set of "administrative" counties, in which the real work of local government and administration was chiefly to be carried on. There are therefore today 52 historic counties and 62 administrative counties—in many instances coinciding geographically, although in some cases a large historic county like Northampton or Yorkshire is divided into two or three of the administrative units.[2] In the historic county, one still finds the sheriff, the lord lieutenant, and the justices of the peace—all appointed by the crown, but all considerably diminished in power and importance as compared with earlier days.[3] There is no council or other elective body. Indeed, the purposes served by the historic county are not so much those of the local area, considered apart, as those of the national government, *e.g.*, as a judicial unit and as the territory within which all county constituencies for parliamentary elections are laid out.

THE ADMINISTRATIVE COUNTY:

The administrative county is a different matter. Like the borough, but unlike the historic county, it is an incorporated area, endowed with a legal personality, and accordingly with power to own and dispose of property, to sue and also to be sued. Furthermore, it has a full-orbed governmental system, which the historic county does not—a system patterned as closely upon that of the reformed boroughs since 1835 as differences of physical and populational conditions will permit. This means that its governing authority is a non-salaried elective

[1] A monumental Local Government Act of 1933 introduced no important changes in local-government areas, machinery, or powers, but consolidated in a single statute the constitution and general functions of county councils, borough (and county borough) councils, urban and rural district councils, parish councils, and parish meetings in England and Wales, and in doing so removed many discrepancies and anomalies accumulated under the legislation of the past hundred years. For most purposes, the act of 1933 replaces the Consolidation Act of 1882. Cf. D. Meston, *The Local Government Act, 1933* (London, 1933), and for the more important parts of the voluminous text, R. K. Gooch, *Source Book*, 425–467, and W. Anderson (ed.), *Local Government in Europe*, 88–106.

[2] Lists of counties of both types will be found in *Whitaker's Almanack* (1939), 728.

[3] As explained in the previous chapter, the justices still carry on the work of "low," or petty, justice. Nearly all of their earlier administrative duties, however, were transferred elsewhere in 1888.

council consisting of a chairman, aldermen, and councillors sitting as one body, and charged not only with levying rates and making by-laws (subject in most cases to sanction by the appropriate executive department at Whitehall), but with carrying on the multifold work of administration through a clerk, a treasurer, a surveyor, and other appropriate "permanent" officials appointed by the council and answerable to it. Contrary to the American student's natural supposition, both county and borough councils, while having some legislative powers, are mainly administrative.

1. THE COUNCIL:

A. ELECTION OF COUNCILLORS

County councillors are chosen, in single-member districts, for terms of three years. The requirements for voting are the same as in borough elections, and since 1928 they have been, as in the case of the parliamentary suffrage, identical for men and women. On the other hand, they are not, and at no time have been, the same as those applying in parliamentary elections. Any person (man or woman) is entitled to be registered as a local government elector if (a) 21 years of age, (b) not subject to any legal incapacity, and (c) an occupier as owner or tenant, for three months prior to June 1 in any year, of any land or premises in the local-government area—or if the wife or husband of a person so qualified and residing with him (or her) on the land or premises. Property, it will be observed, still enters prominently into the qualifications, and on that account many persons can vote in parliamentary elections who cannot take part in choosing councillors in their county or borough. On the other hand, in local elections plural voting is not permitted. Candidates are placed in formal nomination substantially as are candidates for seats in the House of Commons, *i.e.*, in writing, by two registered local-government electors of the electoral division for which they stand, eight other such electors "assenting"; and the conduct of campaigns and elections, including voting by ballot, corrupt and illegal practices regulations, and restriction of expenditures, is very much as in parliamentary elections.[1]

B. CHOICE OF ALDERMEN AND CHAIRMAN

The number of councillors varies with the population of the county;[2] but whatever it is in any given case, a newly elected council proceeds to choose, in addition, a group of aldermen who

[1] A readable account of county and borough elections will be found in E. L. Hasluck, *Local Government in England*, Chap. ii.

[2] The counties are of very unequal size and population. Aside from London the most populous (census of 1931) is Lancashire, with 1,842,900 people, the least populous, Rutland, with 17,401. Eight have populations of less than 100,000.

sit, not as a separate chamber, but in a single body along with the popularly chosen councillors. These aldermen may be selected from among the members of the council (in which case by-elections are necessary to fill the vacated positions) or from the outside; and they must be one-third as numerous as the ordinary councillors.[1] The alderman's term being six years instead of three, half of the number carry over and half are freshly elected whenever a new council begins work. Except that he is chosen differently, has a longer term, and on the average enjoys a little more prestige, an alderman differs in no respect from an ordinary councillor. The arrangement, however, ensures a greater proportion of experienced members, and in addition opens up a way for good men failing of, or not seeking, popular election to be given seats.[2] Councillors and aldermen together choose a county chairman, usually from their own number, but sometimes from outside; and the entire group, numbering as a rule 65 or more persons, functions unitedly as "the council." Ordinary councillors and aldermen alike are drawn mainly from the landowners, large farmers, and professional men, and commonly are elected with little reference to party connections. In some of the more populous counties, however, Labor has actively, and sometimes successfully, sought control, resulting in the infusion of a good many members from the lower-middle and working classes. Since 1907, women have been eligible, and a considerable number have been elected.

C. THE COUNCIL'S POWERS AND DUTIES

The act which created the administrative county made the council responsible for many things, notably deciding questions of policy and making by-laws for the county; supervising the work of the rural district councils; appropriating money, borrowing money (with approval by the Local Government Board or other central authority); levying county rates;[3] maintaining county buildings; providing asylums and reformatories, protecting streams from pollution;

[1] In the London County Council, one-sixth.

[2] Notwithstanding these supposed advantages, a Labor amendment was moved, when the Local Government Act of 1933 was under debate, to abolish the aldermanic system in both counties and boroughs as being useless and undemocratic.

[3] Designed to raise whatever revenue was required beyond that realized from tolls, fees, rents, and—most important of all—subventions from the national treasury for education, police, health, maternity and child welfare, etc., under the grant-in-aid system (see p 363 below). Rates are assessed on "real property," i.e., land, houses, mines, etc., according to value, and, except as provided otherwise by law, are paid by the occupier, if different from the owner. For a full explanation, see E. L. Hasluck, *op cit*, 213–236. "Derating" provisions of the Local Government Act of 1929 exempted all agricultural land from payment of rates and greatly reduced the burden on property used in manufacturing and transportation.

granting licenses (except liquor licenses, which are still granted by the justices of the peace), and appointing administrative officials. The list has since been lengthened materially, and nowadays includes supervision of both elementary and secondary education. However, it must not be inferred that all county councils have precisely the same powers down to the last detail. As is true in the case of borough councils and, in general, of all authorities on a given level, uniformity is the rule, but here and there local variations (to which we cannot pay attention in this brief account) have been introduced by special parliamentary act, order-in-council, or provisional order issued by a central department. No county council—and, for that matter, no local authority of any sort—has, however, any power whatsoever except such as has been conferred, directly or indirectly, by act of Parliament, and every such authority, "dwelling always in the terrible land of *Ultra Vires*," stands constantly in need of, and usually has provision for, expert legal guidance.

D HOW THE COUNCIL WORKS

The county council is too large a body to be brought together very often, and in point of fact it rarely meets more than the four times a year required by law. Needless to say, most of the work for which it is responsible is performed either by its committees or by the staff of permanent county officials. How far national control in county affairs extends, not only as to functions, but also as to machinery, is indicated by the fact that every council is required by statute to have no fewer than 12 stipulated committees, *e.g.*, on finance, education, public assistance, *i.e.*, poor relief (required by the act of 1929), old age pensions, public health, housing, agriculture, and maternity and child welfare. Beyond this, each council may maintain such other committees as it likes; and there is usually one on highways and bridges, one on weights and measures, and also an executive committee—in fact, usually a total of as many as 20 or 30. Finally, there are certain joint committees in which the council is represented, notably one on county police, composed, in equal numbers, of county councillors and justices of the peace. Despite a tendency in all local-government committee organization toward selection of a certain proportion of a committee's members by the committee itself, county-council committees are still chosen mainly by the council as a whole, a "slate" having previously been prepared by a committee of selection, on the analogy of the practice prevailing in the House of Commons at Westminster. Most council committees, in county and borough alike, have subcommittees, and the

demands made by committee work upon the members are increasingly heavy.[1]

2. THE PERMANENT OFFICIALS

The day-to-day administrative business of the county is carried on neither by the council nor by its committees, but rather by, or at all events under the immediate direction of, a group of salaried permanent officials, including chiefly a clerk, a treasurer, a surveyor (in charge of highway construction and repair), a director of education, a land agent, an inspector of weights and measures, and a health officer. In the United States, most or all of these would be elected by the people, for fixed, and usually short, terms; they would be chosen primarily as Republicans or Democrats; and if they hoped to hold their jobs, they would have to divide their time and energy between their administrative duties on the one hand and political activities calculated to win reelection on the other. In Great Britain, where "short ballot" principles prevail in local as well as in national government, they are selected by the council—not, indeed, under formal civil service rules, yet primarily with reference to their personal and professional fitness for the work to be done; and although legally removable by the council at any time,[2] few are ever dismissed on partisan grounds and retention is virtually guaranteed as long as satisfactory service is rendered. In many parts of the United States, county government—although now showing signs of improvement—has traditionally been poorly organized, inefficient, and wasteful. In Britain, it is carefully integrated, economical, and as a rule progressive. One explanation is the high level of competence and public-mindedness usually found in the council. But an even weightier one is the capacity, experience, security, and morale of members of the appointive permanent staff.[3]

DISTRICTS AND PARISHES

A map of any administrative county would show a variety of subdivisions, each with governmental authorities and powers of its own. Here

[1] E. L. Hasluck, *op. cit.*, Chap. vi, is an excellent study of the county and borough council in operation.

[2] By exception, a full-time health officer can be removed only with the consent of the Ministry of Health, and one or two other restrictions apply under certain circumstances.

[3] Cf. L. Hill, *The Local Government Officer* (London, 1938). For a very direct and simple explanation of English county government, see J. P. R. Maud, *Local Government in Modern England* (London, 1932), Chap. iii. The principal books on county government in our own country are J. A. Fairlie and C. M. Kneier, *County Government and Administration* (New York, 1930), and A. W. Bromage, *American County Government* (New York, 1933).

and there would be found a borough, including perhaps a "county borough" or two. There would be found also rural districts and urban districts, and within these the smallest units of all, the parishes Of rural districts, there are, in England and Wales, 482 (in 1938), each with an elective council [1] and a clerk, treasurer, and other permanent officials, and with power to levy rates and carry on administrative work subject to general control by the county council Urban districts—653 in number (1938)—are much the same, except that they have somewhat greater authority over sanitation, housing, licensing, and other activities especially appropriate to thickly settled communities. As rural districts grow in population, they may be converted into urban districts; similarly, urban districts may become boroughs. There is, however, no fixed rule of progression, notwithstanding a general tendency to urbanization, both in populational conditions and in governmental organization, there are plenty of urban districts, and even rural ones, which loom larger in the census returns than do certain of the boroughs. As for the parishes, it is necessary to say only that those situated in rural districts still have minor civil as well as ecclesiastical functions, exercised in most instances through a council, but in many others merely through a primary assembly, or "parish meeting," [2] while those in urban districts have since 1894 had ecclesiastical functions only. As a unit of civil government, the parish (as indeed the rural district also) is —like the township in various parts of the United States—distinctly on the decline.

THE BOROUGH: Nowadays, nearly four-fifths of the people of England and Wales live in towns, and therefore under borough government. A borough is simply an urban area that has received a charter. One hears of different kinds of boroughs—"parliamentary," "municipal," "county." But so-called parliamentary boroughs are merely units or areas for the election of members of the House of Commons; [3] and municipal and county boroughs differ, not in structure and general style of government, but only in the fact (though this is important) that, whereas the former is governmentally, as well as geographically, a part of the administrative

[1] The arrangement for aldermen found in the county and borough councils does not exist in either rural or urban district councils

[2] Through a council in all instances where the population exceeds 300, in other cases optionally, with permission of the county council required if the population is under 100 The parish meeting is Great Britain's only example of direct, as distinguished from representative, government

[3] Geographically, they usually (but not always) coincide with municipal boroughs. Very small municipal boroughs do not figure separately as parliamentary constituencies, while large ones are divided into two or more such.

county in which it is located, the latter has been endowed independently with the powers and responsibilities of a county, and hence is exempt from county jurisdiction. The device of the county borough has been criticized on the ground that it cripples the county by withdrawing from it its wealthiest areas, thereby narrowing the base for taxation. This disadvantage is, to some extent, offset, however, by reduction of the number of people for whom local services have to be provided; and to anyone familiar with the overlapping, friction, and waste arising in the United States from the relations of larger cities and the counties in which they lie,[1] the arrangement will seem to have considerable merit. As soon as any borough attains a population of 75,000, it may ask the Ministry of Health for a provisional order giving it county borough status. Not all choose to do this. Nevertheless, since 1888 the number of county boroughs has risen from 61 to 83, with an aggregate population of some 14,000,000.

1 OBTAINING A CHARTER

How does an urbanized area become a borough? The answer is, of course: by securing a charter giving it the status of a municipal corporation and thereby bringing it under the provisions of the consolidating Local Government Act of 1933 (superseding the Municipal Corporations Consolidation Act of 1882). No standard of ratable valuation is employed, and formerly no standard of population was maintained, with the result that a fifth or more of the 338 boroughs of today have fewer than 5,000 inhabitants, being exceeded in this respect by numerous places which still remain merely urban districts. An English writer once remarked, indeed, that it is almost as difficult to discover why a place becomes a borough as to discern why a commoner is made a peer! Nowadays, however, an unwritten rule forbids the chartering of any district whose population is not at least 20,000. In any event, the charter comes by virtue of an application made to the crown. Prior to 1933, the petition was required to be signed merely by a goodly number of residents, but since that date it can be transmitted only by the district council, which must have approved it at two different meetings separated by an interval of a month. Referred to the privy council, the request is turned over to a committee of that body, which institutes a search-

[1] *E g*, in the case of Chicago and Cook county, Illinois, Detroit and Wayne county, Michigan, New York City and the five counties over which it extends. On the other hand, consolidations of authority in the case of Boston and Suffolk county and of San Francisco and San Mateo county look in the direction of something resembling the English county borough system. Cf. P. Studenski, *The Government of Metropolitan Areas* (New York, 1930).

ing inquiry. If the outcome is favorable, the desired charter is published tentatively in the *London Gazette;* and if at the end of a month no protest has been lodged, either by a local authority such as the council of an adjoining district or of the county in which the petitioning district is located, or by one-twentieth of the local electors of the petitioning district, an order-in-council is issued definitely granting the charter and fixing the boundaries of the new borough. If, however, protest is forthcoming, the grant can be made only in pursuance of an act of Parliament.

2. THE SYSTEM OF GOVERNMENT:

A. COMPARISON WITH THE COUNTY

True to the English plan of concentrating authority in a single elective body, all borough powers are gathered in the hands of a council; and so similar is this council and the machinery through which it operates to that of the county, already described, that little is necessary here except to point out certain significant differences. To begin with, while the council consists of ordinary councillors, aldermen, and a chairman (known in the borough as the mayor), sitting as one body, and chosen on the same general lines and under the same suffrage arrangements as in the county, the councillors are, in larger municipalities, elected in districts, or wards, each as a rule returning three, though in some instances six, or even nine, members; and in smaller ones, more frequently on a general ticket for the borough as a whole.[1] As in the county, the term is three years, but instead of the entire council being elected at one time, one-third of the members go out of office each year,[2] resulting in a borough election every November—either the borough as a whole choosing one-third of the entire council or the various wards choosing one, two, or three of their respective quotas. In the next place, whereas county elections—like *all* local elections 20 or 30 years ago—are in the main non-partisan, Labor's effort to capture control of borough councils has not only been successful in many cases (44 in 1935), but has turned most borough elections into sharp party contests. National issues which have little bearing on municipal affairs are dragged into the electoral discussions. There is, however, some compensation in the fact that elections have grown decidedly livelier, with a better turn-out at the polls than in the counties.[3] In the third place,

[1] The number of members varies, according to population, from six councillors and two aldermen to 42 councillors and 14 aldermen. The aldermen, it may be added, are (as in the county councils) one-third as numerous as the councillors—except that in the metropolitan boroughs of London the proportion is one-sixth

[2] One-third of the aldermen (having six-year terms) every two years

[3] E C Rhodes, "Voting at Municipal Elections," *Polit Quar*, Apr–June, 1938

the mayor—elected for one year by the council, usually from its own number, but occasionally from outside—is, in larger cities at all events, a more conspicuous personage than the county chairman. This does not mean, however, that he occupies any such position as an American mayor under the still prevalent mayor-council form of municipal government, his place is far more like that of the American mayor under the commission plan. He presides over council meetings, votes like any other member, and represents the borough on ceremonial occasions. But he is in no sense the head of a separate branch of government; he has no power of appointment or removal, no control over the permanent officials or their departments, no veto power. The post is one of honor, and an incumbent usually seeks reelection. But it offers no scope for executive and administrative abilities; and, as matters go, it is chiefly important that a mayor be a person of good presence, means,[1] and leisure. Demands of a social and philanthropic nature are heavy, and as a rule no salary is provided.

B. POWERS OF THE COUNCIL

The council constitutes, in the fullest sense, the government of the borough. Hence it exercises substantially all of the powers (save that of electing the councillors themselves) that come to the borough from its charter, from the common law, from general and special acts of Parliament, and from provisional orders. These powers fall into three main classes, legislative, financial, and administrative. The council makes by-laws, or ordinances, relating to all sorts of matters —streets, police, health, traffic control, etc.—subject only to the power of the Ministry of Health to disallow ordinances on health and a few other subjects if that authority finds them contrary to superior law or otherwise objectionable. It acts as custodian of the "borough fund" (consisting of receipts from public property, franchises, fines, fees, etc.), levies "borough rates" of so many shillings or pence per pound on the rental value of real property, in order to obtain whatever additional revenue is needed; draws up and adopts the annual budget; makes all appropriations, and borrows money on the credit of the municipality, in so far as the Treasury authorities at London permit. Finally, it exercises control over all branches of strictly municipal administration, now including education as transferred in 1902 and poor relief as added in 1929. This it does, first, by appointing the staff of permanent salaried officers—clerk, treasurer, engineer, public analyst, chief constable, medical officer, and others—who, with their respective staffs, carry on the daily work

[1] There are beginning, however, to be Labor mayors who are only wage-earners.

of the borough government and, second, by continuous supervision of these same officials and their subordinates, exercised through committees which it maintains on the various branches of municipal business.

C. THE COUNCIL'S COMMITTEES

The council itself meets in the town hall monthly, fortnightly, or weekly, as business requires. Much of its work, however, is performed through the committees mentioned. As in the counties, several committees, *e.g.*, on finance, education, poor relief, and old age pensions, and a "watch" committee having to do with police, fire protection, and certain kinds of licensing, are required by national law. Beyond these, the council creates others as it needs them, the total sometimes running as high as 25 or 30. Practically all matters brought up in council meeting are referred to some committee; and since they are there usually considered in a good deal of detail, and by the councillors best informed on the subject, committee findings and recommendations commonly carry enough weight to assure them of being made the basis of the council's actions.[1]

D. THE "MUNICIPAL SERVICE"

The day-to-day work of administration is carried on by the "municipal service," consisting of (1) a relatively small number of expert, professional heads of departments, and (2) an adequate staff of subordinate officials and employees. As in the counties, officials of the higher grades are chosen solely by the council.[2] Candidates are not subjected to formal examination, but are sifted very much as are applicants for responsible positions in the employ of private business establishments. When, for example, a new borough treasurer is needed, the finance committee looks over the field, receives applications, inquires into qualifications, and at length makes a recommendation to the council, which can usually be depended upon to ratify the committee's choice. It will not do to say that personal and partisan considerations never enter in; as between two candidates equally qualified but of different political faiths, the choice is likely to fall upon the one whose political views coincide with those of the council majority. Persons winning appointment are usually, however, well qualified both personally and professionally, and it is a very common thing for a borough to call into its service a surveyor or a medical officer who has had a successful career elsewhere.

[1] An informing book by an experienced municipal councillor is E. D. Simon, *A City Council from Within* (London, 1926). Cf. C. R. Attlee and W. A. Robson, *The Town Councillor* (London, 1925).

[2] Except that one of three borough auditors is appointed by the mayor from among the members of the council and the other two are elected by the voters of [illegible] from among persons who are qualified to be, but are not, members

Once appointed, an official, although legally removable by the council at any time, can depend on being continued in his post as long as his work proves satisfactory; unlike American municipal administrators, he is not under temptation to play politics in order to obtain reelection. Security of tenure, together with an open road to preferment through calls to other boroughs, makes for accumulation of experience, growth in capacity, and a general professionalizing of the upper levels of the municipal service with which we have nothing to compare in the United States except the limited though significant growth of the city managership. Large advantage arises, too, from attendance of higher officials at meetings of council committees for purposes of information, discussion, and advice. A main reason, indeed, why committee recommendations carry so much weight is the knowledge of the council that they have been arrived at, not by mere deliberation of the committee as a group of laymen, but by full and free discussion of the problems involved, participated in by the persons best qualified to help reach wise decisions. As a rule, no such cooperation exists between council committees and heads of departments in American cities, at all events in those of the mayor-council type.

STILL ROOM FOR IMPROVEMENT

Subordinate members of the municipal service are appointed by the head of the department concerned; and here the situation is less satisfactory. Except in a few instances in which the council has laid down minimum qualifications, there is no uniformity of method and no guarantee that tests of any adequate nature will be applied. "Perhaps less than ten per cent of the local administrative and clerical officials," said a leading English student of the subject a decade ago, "are recruited by reference to some public and objective test of quality; and in the main, with the exception of a few enlightened municipalities [*e.g.*, London], the only attention paid to recruitment is of a negative sort, to avoid flagrant and scandalous inefficiency." [1] Notwithstanding the room still left for patronage today, as practiced by the chiefs of departments and by meddling councillors, the service is on the whole considerably freer from the devastating effects of partisan and personal favoritism than are the municipal services of the United States and most other countries. Still, says another competent English critic, "no one who has thought about the matter can believe that the municipal service can for long continue on its present lines." [2]

[1] H. Finer, in *Public Administration*, VI, 295 (1928).

[2] W. A. Robson, *The Development of Local Government*, 14. The literature English borough government is voluminous There is no better treatment of

THE GOVERNMENT OF LONDON

Most of the world's great capitals—Paris, Berlin, Rome, Tokyo, Washington—have governments quite unlike those of other municipalities of the country in which they are situated. This is true of London as well At the heart of this greatest of all urban centers [1] stands a curious historic survival, the "City"—once a separate municipality, and still (in spite of the fact that it is primarily a business and financial district, with hardly more than 9,000 actual residents) clinging resolutely to its identity as a governmental and administrative unit. With a corporation consisting of "freeman and liverymen," [2] and a government composed of (1) a lord mayor, (2) a "court of common hall," or elective public assembly, (3) a "court of common council," (4) a "court of aldermen" (sitting apart from the council), (5) a group of council committees, and (6) a staff of permanent administrative officials, the City is an interesting, although in these days relatively unimportant, splotch of pre-reform municipal organization on a map of modernized local areas In 1888, all London outside of this focal square-mile—previously a labyrinth of separate jurisdictions—was drawn together in an administrative county of London (containing over 100 square miles), with an elected council enjoying large powers. And in 1899, a Government of London Act further simplified the situation by sweeping away a mass of surviving parish and district jurisdictions and authorities and creating within the county 28 metropolitan boroughs, each with mayor, aldermen, and councillors, such as any provincial borough possesses, although with powers somewhat differently defined and in certain directions, *e.g*, finance, considerably less extensive. Superimposed upon this structure is the jurisdiction of a metropolitan water board (created in 1902), also that of a police establishment administered directly by the Home Office through a police commissioner, with control extending over all parishes within 15 miles of Charing Cross,

subject generally than W. B Munro, *The Government of European Cities* (rev ed.), Chaps II–VIII. But see also J P. R. Maud, *Local Government in Modern England, passim,* and especially the remarkably fine survey to be found in a volume celebrating the hundredth anniversary of the Municipal Corporations Act, *i.e*, H J Laski, W. I Jennings, and W A Robson (eds), *A Century of Municipal Progress* (London, 1935). An interesting comparative study is E S Griffith, *The Modern Development of City Government in the United Kingdom and the United States,* 2 vols. (London, 1927).

[1] The population of the metropolitan police district, commonly known as Greater London, is now more than eight and a quarter millions, which means that one Englishman in every five is a Londoner

[2] The liverymen are members of some 75 "companies," descended from mediaeval guilds, and are so called because of being entitled to wear the "livery," or dress, of the respective organizations

or an area of almost 700 square miles. The main distinguishing features of the situation are, therefore, (1) an administrative county which is entirely urban, and therefore physically analogous to a county borough, (2) 28 subdivisions of this county, having ordinary borough governments, but with powers curtailed by reason of the unusual authority assigned the government of the county, and (3) a separate, semi-autonomous area at the center with a scheme of government carried over from early days. Among English local authorities, few are more vigorous, progressive, and imposing than the London County Council.[1]

CENTRAL CONTROL OVER LOCAL GOVERNMENT

A hundred years ago, counties and boroughs knew but little regulation or control from London. There was a certain amount of national legislation to be enforced. But, speaking broadly, the local jurisdictions taxed, spent, borrowed, built roads and streets, and otherwise took care of their affairs as they pleased. No longer is this true. Heeding the demands of reformers, Parliament passed laws creating new areas, abolishing old ones, prescribing forms of government, conferring powers, and imposing duties. Changing social conditions and broadening conceptions of the functions of government caused one new activity after another to be taken up, inviting control on uniform lines. Equally important, Parliament started the practice of granting money to local authorities in aid of education, police, and other services—from which it was but a step to a claim by the national government of a right to inspect the administration of such services in order to find out whether the money was being spent to the best advantage, and from this but another step to assertion of a right to fix standards and assist in seeing that they were maintained.[2] The upshot is that local govern-

[1] The best brief description of London's government is W. B. Munro, *The Government of European Cities* (rev. ed.), Chap. IX. Cf. W. A. Robson, *The Government and Misgovernment of London* (London, 1939), P. A. Harris, *London and Its Government* (rev. ed., London, 1933), H. Morrison, *How Greater London Is Governed* (London, 1935), A. Webb, *London of the Future* (London, 1921); G. Gibbon and R. W. Bell, *A History of the London County Council, 1889–1939* (London, 1939), D. E. McHenry, "The London County Council under Labor Rule," *Nat. Munic. Rev.*, Mar., 1937, and W. A. Robson, "London and the L. C. C. Election," *Polit. Quar.*, Apr.–June, 1937. The findings of a royal commission of several years ago on the government of the metropolis are presented in *Report of the Commissioners Appointed to Inquire into the Local Government of Greater London* (London, 1923). The principal problems relating to the matter today are those of (a) redistributing powers and functions between the county and the boroughs, and (b) extending the system over densely populated adjoining areas not at present included in the county.

[2] Something like one-fourth of all local expenditure is now met from national grants-in-aid. The proportion has been increased substantially in recent years, par-

ment all along the line has been drawn into intimate relation with the national government—into an integrated system in which county, borough, and district, although still by no means mere subdepartments of Whitehall, nevertheless find themselves supervised and controlled from that source at many points. Centralization has been carried by no means as far as in France; no agent of the central government wields power locally in any such fashion as the French prefect,[1] and at some points, *e.g.*, in the matter of fire protection, there is no central control at all. But of the "home rule" boasted by many American municipalities, Englishmen of today know little.[2]

AGENCIES OF CENTRAL CONTROL

In France, the policy of strong central control was adopted deliberately and is carried out with scrupulous fidelity to a unified, symmetrical, and logical plan. Nearly all of the threads are gathered tightly in one executive department at Paris, the Ministry of the Interior, functioning locally in each of the departments through the prefect. In England, the situation is different. Centralization has come about gradually and slowly, in deference to no theory and according to no fixed plan. Running counter to strong traditions of local independence, it has been accepted grudgingly, and even now is a frequent theme of lament and criticism. Under these conditions, there is naturally little system or logic about it; in response to palpable needs, the national government has pushed a controlling arm now in one direction and now in another, without ever correlating such activities under a single department or striving for more than a general sort of consistency in them. The central authorities that have to do with local affairs, in one way or another, are therefore many. First of all, there is Parliament, which enacts laws prescribing what areas or units there shall be, what kinds of government they shall have,

ticularly as a result of the exemption of much land and other real property from the burden of rates under terms of the Local Government Act of 1929 (see p. 353, note 3, above). A new arrangement introduced by the act mentioned permits a large fund to be distributed annually according to a complicated general formula and without specification of the particular services for which allotments may be used Direct grants for services continue also, however, to be made For those parts of the act of 1929 relating to "derating" and grants-in-aid, see R K Gooch, *Source Book on the Government of England*, 468–473, and on the general subject, R K Gooch in W Anderson (ed), *Local Government in Europe*, 55–65 On local government finance generally, see M Newcomer, "English Local Government Finance," *Polit Sci Quar*, Dec., 1936, and *Central and Local Finance in Germany and England* (New York, 1937)

[1] See pp. 585–588 below.

[2] See, however, G M Harris, *Municipal Self-Government in Britain; A Study of the Practice of Local Government in Ten of the Larger British Cities* (London 1939).

what activities they shall or shall not undertake—even what committees (among others) their councils shall maintain. Parliament likewise authorizes grants-in-aid and finds the necessary funds. In the second place, the privy council (more properly, the king-in-council) grants charters of incorporation, fixes dates for the taking effect of new statutes, and transfers functions and powers from one agency to another. Finally, many of the executive departments at London share extensively in supervision and control over local affairs. Most important by far is the Ministry of Health, which deals with vaccination, sanitation, and water supply, audits local accounts,[1] and handles most applications from local units for permission to borrow money. But the Home Office administers the police system of metropolitan London, and elsewhere fixes police standards and decides whether they have been so complied with as to entitle the county or borough to receive half of the cost out of national funds. The Board of Education oversees the local management of all elementary, secondary, technical, and collegiate schools supported in whole or in part by national subsidy. The Ministry of Agriculture and Fisheries directs the enforcement of laws relating to markets, food and drugs, diseases of animals, and numerous other matters. The Ministry of Transport has supervisory jurisdiction over roads, tramways, ferries, harbors and docks, and (through an auxiliary board of electricity commissioners) over electric lighting. The Treasury not only sanctions every grant of national funds in aid of local education, police, health, and highway activities, but, through its public works loan board, approves every advance of money to local authorities for housing improvements and other public works. Even this does not exhaust a list which, if pursued to the end, would be found to include fully a score of the nation's leading departments and boards.[2]

FORMS OF CONTROL

Except for direct management of the London police by the Home Office, the central departments do not themselves undertake the actual performance of administrative work falling within the fields of the local authorities. In one manner or another, however, they do almost everything short of this. They give information and advice. They hear complaints, make investigations, settle disputes, and order remedies to be applied.

[1] In boroughs, however, only those relating to expenditures on education and housing.

[2] The functions here in mind are those belonging primarily to local authorities, but exercised under central supervision or control, as distinguished from national services centrally administered, such as sickness and unemployment insurance and old age pensions.

They lay down rules and regulations as to organization, procedures, methods, objectives, qualifications, and equipment which the local authorities must observe. They disallow local ordinances held to have been issued in excess of proper power. They assent or disagree to the doing of many things which are allowed by the national laws to be done only with the approval of the appropriate central department. They audit various, although not all, local accounts; and, in the absence of anything corresponding to our constitutional or statutory municipal debt limits in the United States, they keep local jurisdictions solvent by passing upon their proposals for borrowing money—a power, it will be perceived, which gives them a great deal of control over what the English call "municipal trading," *i.e.*, the public ownership and operation of gas and electric-light plants, waterworks, tramways, and similar utilities. It is not to be inferred that all of the departments named exercise these and other functions on precisely the same lines Some have been given powers not possessed by others, *e.g.*, the Ministry of Health in relation to auditing, and even a single department is differently situated in relation to different local agencies and different forms of local activity. All told, however, central control is both wide and deep; not only so, but it is steadily penetrating to new phases and levels. Though often complained of as paternalistic and out of keeping with English traditions of local independence, it is rooted in the conditions, needs, and ideas of a technological age, and it is difficult to see how it can ever in future be greatly curtailed.[1]

A CONTRAST BETWEEN ENGLISH AND AMERICAN METHODS

English local government has been genuinely revolutionized in the last hundred years, and it nowadays has many admirable features. Not the least of these is the mode or manner of the central control just described. In the American states, arrangements have traditionally been quite different. Whereas in England there is only very broad and general legislative regulation, with the Ministry of Health, the Board of Education, and similar administrative agencies authorized to make or permit local adaptations calculated to meet particular situations, the separation-of-powers principle basic to our

[1] For further discussion of the relation of central and local authorities, see E. L. Hasluck, *op. cit.*, Chap. iv, J. P. R. Maud, *op. cit.*, Chap. viii, W. B. Munro, *The Government of European Cities* (rev. ed.), Chap. iii, and W. A. Robson, *The Development of Local Government*, Pt. ii. Though not recording the latest developments, S. Webb, *Grants-in-Aid* (new ed., London, 1920), is the principal work on that exceedingly important subject, for a more recent brief discussion, see E. L. Hasluck, *op. cit.*, 237–249. On the equally significant development of grants-in-aid in the United States, see F. A. Ogg and P. O. Ray, *op. cit.* (6th ed.), Chap. vii, and A. F. Macdonald, *Federal Aid* (New York, 1928).

American state governments long restrained legislatures from entrusting very much discretionary authority to officials and departments acknowledging no responsibility—in the English sense—to the legislative branch. Everything therefore tended to be regulated legislatively and on a state-wide basis, with local jurisdictions treated precisely alike, however different their conditions and needs. In two ways, the situation has changed appreciably in later years: (1) constitutional or statutory provisions for municipal "home rule" have in several states relaxed the rigid uniformity previously existing, and (2) the multiplication of virtually independent quasi-legislative commissions and boards, and of discretionary administrative tribunals, has opened a way for greater flexibility and diversity. Both developments represent clear gains. In a broad and general way, however, the contrast between English and American regulatory methods still holds good.

FURTHER PROBLEMS OF LOCAL-GOVERNMENT REFORM

Excellent as the general scheme of local government in England undoubtedly is, it is by no means immune from doubts and criticisms, and people who supposed that the local-government acts of 1929 and 1933 had solved most problems for a good while to come are finding themselves wholly mistaken. Many wonder whether county, and especially borough, government will not eventually break down, or at all events lose much of its present efficiency, under the steadily growing burden of duties and responsibilities devolving upon it. Notwithstanding the simplification that has taken place in the last half-century, many persons consider that there is still too much confusion of local-government areas and believe that much would be gained from a structural and functional reorganization on the principle of but one primary local government for any given area—presumably the county borough for large urban centers and the administrative county for rural and smaller urban localities. Starting with this opinion, Labor goes on to argue for a greater amount of "home rule," for progressive development of municipal activity, and in particular for more vigorous extension of social and cultural services such as education, public health, and housing. Some years ago, the party, indeed, sponsored a proposal that the whole existing relation between the national and local governments be discarded, and that thenceforth local authorities, instead of being confined strictly to powers conferred upon them, be regarded as authorized to exercise any and all powers not specifically reserved to the central government at London. There are suggestions also for regional groupings, in recognition of the decided tend-

ency of smaller administrative areas, under twentieth-century conditions, to find themselves lacking either the means or the will to carry out the functions with which they have been entrusted, and also with a view to opening a way for devolution on more ambitious lines. Discussion of these and other proposals goes on perennially, with as yet no unanimity of opinion, even in the ranks of Labor, where interest in the subject is undoubtedly keenest.

In all earlier times, local-government reform has proceeded on characteristic English lines—slowly, belatedly, grudgingly, and in piecemeal fashion, yet, given time enough, with far-reaching consequences. The same is likely to be true in the future. Left to itself, local government tends to drag along indefinitely in grooves cut by tradition, as did the government of English counties and boroughs in the seventeenth and eighteenth centuries. In this present age, social, economic, and psychological forces are at work which, one may be sure, will for a good while keep counties and boroughs and their multifold problems in the thick of scholarly investigation, parliamentary debate, and popular discussion. Nevertheless, a statute here, an order-in-council there, and an administrative rule yonder will very likely continue to be the means by which the house is progressively rebuilt to meet the needs of its tenants.[1]

[1] Illuminating discussions of present problems of local-government reform will be found in E. L. Hasluck, *op cit*, Chap x, W A. Robson, *The Development of Local Government*, especially Pt 1, and "The Central Domination of Local Government," *Polit Quar.*, Jan–Mar, 1933, and H Finer, *English Local Government*, Chaps II, VII, etc Cf S and B Webb, *A Constitution for the Socialist Commonwealth of Great Britain*, Pt II, Chap IV, G D H. Cole, *The Future of Local Government* (London, 1921), and H J Laski, *The Problem of Administrative Areas* (Northampton, Mass., 1918) A wealth of material on the subject will be found in *First Report of the Royal Commission on Local Government*, Cmd 2506 (1924–25). and *Second Report of the Royal Commission on Local Government*, Cmd. 3213 (1928–29).

CHAPTER XX

United Kingdom and Commonwealth of Nations

THE constitution, government, and parties described in the foregoing chapters are those of England primarily. In varying degrees, they are shared, however, by Wales, Scotland, and Northern Ireland. Furthermore, tied in with the political institutions of the British Isles is a vast system of imperial and colonial government extending over more than a quarter of the habitable surface of the globe, and applying, in one form or another, to nearly the same proportion of the world's population. To describe the governments operating in the widely dispersed outlying lands in which allegiance to the British crown is acknowledged is no part of the plan of this book. Whitehall and Westminster—Buckingham Palace, too—are, however, foci from which lines of political power and influence radiate to all corners of the earth where the Union Jack is flown; and a true understanding of the government of even England alone requires some attention to the ways in which it is geared to the government of an empire.

ENGLISH GOVERNMENT AND IMPERIAL GOVERNMENT INTERLOCKED

WALES

Wales need not detain us, because for governmental purposes that historic principality has long been to all intents and purposes merged with England. Edward I drew a large part of the country under English control in 1284, organized it in six counties on the English model, introduced the English judicial system, and—half with serious intent, half in jest—bestowed upon his son, in 1301, a title ever since borne by the eldest son of royalty while awaiting his heritage, *i.e.*, "Prince of Wales."[1] Henry VIII completed the task by setting up six more counties, giving both the counties and the leading towns the right to be represented in the House of Commons, and abolishing all local laws and customs which were at variance with the laws of England. Thenceforth, in so far as Wales had any separate history at all, it was cultural rather than constitutional. In 1747, indeed, it became

[1] It is hardly necessary to say that the title carries with it no powers of government.

a rule that in all acts of Parliament "England" should be construed to include Wales unless otherwise specified. The common law holds good in England and Wales alike; and while a certain amount of legislation is enacted for Wales separately, the great bulk of statutes applying to England apply equally, and without saying so, to the "principality." One interesting divergence, which has a certain amount of political significance, arose in 1920, when, after prolonged agitation on the subject, an act of Parliament disestablished and disendowed the Anglican Church in both Wales and the adjoining closely related English county of Monmouth. Proposals for devolution, in which Wales almost always figures as an area that might be fitted out with a regional parliament, has given some stimulus, too, to a movement for autonomy, thus far to be observed chiefly in the north and west, where the population is most purely Welsh in speech and tradition and most aware of somewhat localized conditions and problems of labor, agriculture, and education. For a good while to come, however, Wales is likely to remain, constitutionally, about where it now is.

SCOTLAND:

1. THE UNION OF 1707

To the north of England lies Scotland, separated from the larger country by no important physical barriers, and seemingly destined by nature to form, in conjunction with it, one homogeneous state. Historical circumstances, however, made a political union between the two lands exceedingly difficult to bring about. Even yet there is not complete amalgamation, and here, too, recurring discussion of schemes of devolution creates at least a possibility that existing bonds may in future be relaxed rather than the reverse.[1] Like Wales, Scotland long went its own way largely unmolested, although by no means uninfluenced, by its more powerful neighbor. In 1603, James VI of Scotland became the first Stuart monarch of England as James I, and thenceforth for a century the two countries were united through the crown, but otherwise separate, each with its own parliament, its own established church, its own laws, courts, army, and system of finance. Finally, in 1707, the Scots, induced chiefly by the industrial and commercial advantages to be gained, grudgingly accepted an act of union under which the two countries were erected into a single kingdom (thenceforth known as Great Britain) and, in lieu of a separate parliament, received the right to be represented in both houses of the parliament at Westminster. Union, however, was not to mean complete absorp-

[1] A home-rule movement dating back half a century or more has not, however, made much headway.

tion. Scottish law—civil and criminal—was to go on as before, likewise the country's judicial system, the established Presbyterian Church, and a scheme of publicly supported education such as England herself knew nothing of for another 200 years.

2. ARRANGEMENTS FOR GOVERNMENT

From Queen Anne's day to our own, Scotland's constitutional position has remained essentially unchanged. All general legislation for the country is enacted at Westminster—much of it in the form of measures applying to Scotland, England, and Wales indistinguishably, although in weightier matters it is customary to give Scotland the benefit of a separate statute with such minor variations as may seem desirable; and the country is further recognized as an entity for legislative purposes through the device of a standing committee in the House of Commons at Westminster containing all of the Scottish members, to which every public bill relating exclusively to the northern area is referred.[1] If, however, Scotland is not expressly excepted from a statute drawn in general terms, it is—as in the case of Wales—to be regarded as included. The country is also given special recognition on administrative lines through the presence in the cabinet of a secretary of state for Scotland, who heads an establishment containing under-secretaries, a lord-advocate, a solicitor-general, a registrar-general, a board of health, and numerous other officers and boards corresponding broadly to those functioning in England and Wales. Counties and boroughs serve as the principal areas of local administration and self-government, and, though still differing at some important points, tend steadily to grow more like those in England. The system of courts is still very different from the English. The same is true of civil law and procedure, although criminal law has become practically identical in the two countries. The separate established church persists, likewise a distinct system of public education.

THE DIFFERENT CASE OF IRELAND

Far less amicable and stable have been the relations between England (Great Britain since 1707) and Ireland. After all, Scotland cast in her lot with England voluntarily, because she saw that it was to her interest, in a business way, to do so. Ireland, however, was repeatedly invaded and conquered, held for centuries in abhorred subjection, and finally forced into a legislative union by British decision backed up with clever political legerdemain. She may have derived some benefit from her English connections; in certain directions she undoubtedly did so. But she always regarded herself as a con-

[1] See p 215, note 1, above.

quered and oppressed country, the prey of English landlords and tax-gatherers; and for hundreds of years her history was largely a story of efforts to confine British control within the narrowest limits possible, as the next best thing to eliminating it altogether. In our own day, those efforts have so far succeeded that a sixth of the island has won long-coveted "home rule," while the remainder, for which this concession ceased a good while ago to be an acceptable solution, has achieved a degree of autonomy bordering closely on independence. During the World War, and for some time both before and after, the status of Ireland furnished one of the two or three most explosive and baffling constitutional questions with which harassed British statesmen were called upon to deal.

THE LONG FIGHT FOR HOME RULE

The tortuous story of the Irish controversy and settlement must be read in other books than this.[1] A few main facts may, however, be noted. By the famous Act of Union of 1800 (effective at the beginning of the following year), Ireland was joined with Great Britain to form the United Kingdom of Great Britain and Ireland, losing her separate parliament, as had Scotland a century earlier, and receiving representation for the first time at Westminster, with executive authority exercised through a viceroy acting in the name of the crown. Ostensibly, the union was for all time. Hardly was the ink dry on the statute, however, before the arrangement became the object of sullen opposition, punctuated with violent demonstrations, and the protest grew until by the second half of the century the "Irish question," presenting many angles but heading up in a demand for "home rule" with a restored parliament, became a veritable politicians' nightmare. Gladstone's home rule bills of 1886 and 1893 have been mentioned in another connection.[2] Neither became law, but in ensuing decades home rule for the disaffected island (stoutly opposed by the Conservative party) ranked as a principal objective of the Liberals, and in 1913, with feeling running so high that civil war in Ireland—perchance in England, too—was imminently threatened, the Liberal government of Mr. Lloyd George twice got a bill on the subject through the House of Commons. All that seemed necessary in order to place the measure on the statute-book under terms of the Parliament Act, and over the head of the sturdily re-

[1] E.g., E. R. Turner, *Ireland and England* (New York, 1919), W. A. Phillips, *The Revolution in Ireland, 1906–1923* (New York, 1923), R. M. Henry, *The Evolution of Sinn Fém* (London, 1920), and A. C. White, *The Irish Free State: Its Evolution and Possibilities* (London, 1923). For a briefer account, see F. A. Ogg, *English Government and Politics* (2nd ed.), Chap. xxiv.

[2] See p. 273 above.

sisting House of Lords, was for the popular chamber to pass it once more; and in the summer of 1914, this step was duly taken. Before the royal assent was asked, however, the government so far drew back as to accept a plan for a conciliatory amendment, and this compromise, itself unfavorably amended in the House of Lords, was under debate in the House of Commons when, suddenly, the entire political scene was changed by the outbreak of the World War. Under stress of titanic international combat, even the question of Ireland paled. The amendment was dropped, and the act as passed was rushed through its final stages. The government, however, promised that no effort would be made to put the measure into effect until after the end of the war (or in any event until after a year, should the war be over in less time than that), and furthermore not until after it should have been amended to make it more palatable to the opposition.

THE IRISH SETTLEMENT OF 1920–22

In point of fact, the hard-won statute never went into effect at all; for, ironically enough, by the time when the way was open to revise it and put it into operation, the bulk of Ireland would have none of it. The war lasted longer than had been expected, and while it was running its dreary course, central and southern Ireland fell under the dominance of an organization, Sinn Féin,[1] which had no interest at all in mere home rule and would be satisfied with nothing less than the severance of all British connections and the establishment of an independent Irish republic. How thoroughly the situation had changed was revealed startlingly at the general election of 1918, when out of a total of 105 seats to which the island was entitled, Sinn Féin, now operating as a political party, won 73 and the Nationalists—the historic party of home rule—only seven The remaining 25 were garnered by the Conservatives in the northeastern counties of Ulster, which, being mainly Protestant, largely industrial, and closely bound to Great Britain by economic interests, had been opposed to even the home rule program. Refusing to have anything to do with a British-controlled parliament, the Sinn Féin contingent set itself up at Dublin as a Dáil Eireann, or national assembly; Eamon de Valera was elected president of the "republic", and the country passed into a period of open rebellion and civil war. Recognizing that there were now, in a fuller sense than ever before, two Irelands—one Catholic and agricultural, the other Protestant and industrial[2]—the parlia-

[1] An old Irish term pronounced "shin fane" and meaning "ourselves alone"

[2] Speaking but broadly, of course For example, almost one-third of the people of the Ulster counties which later refused to join the Free State are Catholics.

ment at Westminster passed, in 1920, a new home rule act, repealing the suspended measure of 1914 and providing for an essentially separate home rule régime for each of the two sections. Led by Sinn Féin, the south and center, however, held out stubbornly against the plan, and although Ulster accepted it and is governed under it today, it never was more than theoretically in effect in the larger of the two areas. Driven still farther along the unavoidable path of compromise, the Lloyd George coalition government took steps eventuating in an historic "treaty" with the Sinn Féin leaders in 1921; and under terms of this agreement, in 1922, the Irish Free State was set up—not the independent republic that had been sought, to be sure, yet a political entity endowed with the same constitutional status as Canada and other self-governing portions of the "community of nations known as the British Empire." The new quasi-dominion was to include the whole of Ireland unless within a specified time the northern counties should signify their desire to remain outside. This they promptly did, and to this day the island remains divided.

THE "FREE STATE" (1922–37)

The settlement was far from satisfactory to the Sinn Féiners, and the new régime was installed to an accompaniment of continued strife and even civil war. A written constitution, duly approved at London, was, to be sure, adopted in 1922, and a government, Irish from top to bottom (save only for a British governor-general), was organized, with as full independence as that enjoyed by any sovereign state except in a few matters—chiefly foreign relations, defense, and judicial appeals—in respect to which the treaty imposed restrictions. Led by de Valera, large and influential elements, however, revived the demand for outright independence, and incessant conflict between the London and Dublin authorities resolved itself into not only economic war but also deadlock on constitutional arrangements. In time, the Dublin government got a grip upon the situation, and slowly the country was pulled back from the brink of ruin, by 1925, the new régime could be regarded as definitely on its feet. Constitutional discussion continued, nevertheless, at fever heat, and in 1932 de Valera and his republican-minded Fianna Fáil party captured control of the lower house of parliament. Then followed, amid ceaseless contention, and by unilateral action of the Dublin parliament, a series of measures frankly designed to lead toward an independent republic—abrogation of the oath of allegiance to the British crown, abolishment of the right of the governor-general to hold up legislation by refusing his assent, termination of the right of appeal from the Free State supreme court to the judicial committee of the

privy council; and, significantly, the authority of the Free State to take all of these steps was upheld by the privy council itself in 1935,[1] on the ground that the Statute of Westminster of 1931 [2] had superseded the act of 1922 in which the British Parliament had given its assent to the newly framed Free State constitution. Although leaving open the question (controversial to this day) of whether Southern Ireland was free to throw off obligations imposed by the Anglo-Irish treaty of 1921, *e.g.*, that of allowing her harbors to be used as naval bases by the British fleet, the purport of the decision was clearly that she was entitled independently to make any changes in her constitutional arrangements that she desired.[3]

THE CONSTITUTION OF "EIRE" (1937)

With ardent separatists in the saddle, it was to be expected that full advantage would be taken of the newly conceded authority. Reaffirming that the only possibility of cordial relations between Ireland and Great Britain lay in frank acceptance of full liberty for a reunited Irish nation, de Valera came forward in May, 1937, with a new constitution calculated to achieve the desired end; and although the popular vote on it (685,105 in favor to 526,945 against) revealed more division of opinion than had been thought to exist, the instrument was duly put into effect on December 29.[4] Neither from the constitution itself nor from the discussion of it which has gone on vigorously since it was adopted can one obtain a clear and conclusive idea of the position into which the former Free State now emerged. In one of its articles, the document declares "Eire" (in English, Ireland) "a sovereign, independent, democratic state." Elsewhere, however, it implies that the country's association with the British Commonwealth of Nations is not for the present to be terminated. Further confusion arises from the instrument's unequivocal assertion that "the national territory consists of the whole island of Ireland"; whereas not only does Northern Ireland continue separate as before, but no attempt to extend the new constitution over it has been made. The facts of the situation would seem to be these: (1) for as long as may be deemed expedient, Eire will retain some organic connection with the British

[1] In Moore *v.* Attorney-General for the Irish Free State.

[2] See p. 386 below.

[3] On the Free State and its constitutional system, see F. A. Ogg, *English Government and Politics* (2nd ed.), Chap. xxxi, and for fuller treatment, L. Kohn, *The Constitution of the Irish Free State* (London, 1932), and N. Mansergh, *The Irish Free State; Its Government and Politics* (London, 1934).

[4] For the text, see [British] Foreign Office, *The Constitutions of All Countries* (London, 1938), I, 188–221, also *Internat. Conciliation*, No. 343 (Oct., 1938).

Commonwealth; [1] (2) the terms of this connection, and the future continuation or abandonment of it, are matters for Eire to decide entirely for herself; (3) for the present, the clause defining the national territory as consisting of the entire island expresses an aspiration rather than a fact; but (4) the objective toward which all effort will be directed is a united island, and a nation which will have no hesitation about calling itself a republic Extremists wanted a republic proclaimed in the 1937 fundamental law, but de Valera's view prevailed that such a course would make more difficult the winning over of the six northern counties, and, in any case, it was manifest that the term "republic" could be brought into use later without need for changing the constitution in any other respect. Under the new constitutional set-up, plenty of thorny questions remain for discussion between the governments at Dublin and London. But the fact that the constitution itself was not challenged by the British government may be taken to indicate that the Irish people have quite definitely become the arbiters of their own destiny. Only for the protection of Northern Ireland will Great Britain ever again be likely to consider resorting to armed force in the island. So far have matters progressed since Prime Minister Lloyd George, as late as 1922, was heard freely threatening, on the Irish question, "immediate and terrible war!" [2]

SOME FEATURES OF THE GOVERNMENTAL SYSTEM

The governmental system of Eire under the constitution of 1937 must be outlined very briefly. The focal authority is, as would be expected, an elective parliament; and, notwithstanding that a senate which had been the subject of much experimentation under the Free State, was discarded altogether in 1936, the new parliament reverts to the bicameral form. A House of Representatives (Dáil Eireann) numbering (in 1938) 138 members is elected on lines similar to those prevailing in England, except that proportional representation is employed and there is no plural voting. A Senate (Seanad Eireann) of 60 members is made up according to a somewhat complicated formula, with the larger part (43 members) chosen under proportional representation, by an electoral college (consisting of the Dáil and seven representatives from each of the county councils) from five panels of candidates nominated by

[1] Legally, it would appear, such a connection—in some form—must continue so long as the Anglo-Irish treaty of 1921 stands, for that bilateral instrument provides specifically that Southern Ireland shall remain "within the community of nations forming the British Commonwealth of Nations"

[2] Cf. H. Harrison, *Ireland and the British Empire* (London, 1937).

agricultural, industrial, labor, and other vocational interests,[1] affording, therefore, an interesting example of functional representation. On the executive side, there is no longer, of course, a governor-general representing the king, but instead a president elected by direct vote of the people for a term of seven years—which is also the term of members of Parliament except when cut short by a dissolution.[2] The form of government is parliamentary, rather than presidential; and although critics of the constitution allege that the way was left open for the titular chief executive to become "a tyrant," nearly all of the powers assigned to him are his only nominally, being in fact exercised solely on advice received from the prime minister. Technically, the office of prime minister is new. Practically, however, it differs but little from that of president of the council under the Free State constitution; and in 1937 de Valera simply stepped quietly from one post to the other. Of ministers, there may be, under the constitution, from seven to fifteen; and, headed by the prime minister, they form a cabinet which, speaking broadly, functions like the cabinet at London, and under the same sort of responsibility to the lower chamber. Appointed by the national president on nomination of the Dáil, the prime minister must be a member of that body, as must also the minister of finance and indeed all others, except that as many as two may be senators.

ARRANGEMENTS FOR LEGISLATION

As in Britain, the lower house has supreme control over finance; money bills must be presented to it first; and although the Senate must be given 21 days in which to consider such measures, they are deemed to have passed both chambers at the end of the period, even though the upper branch may not have acted upon them at all or may have proposed amendments not acceptable to the Dáil. Non-financial measures, too, can be placed on the statute-book without senatorial approval, for if, after a measure of the sort (having passed the Dáil) is sent to the other house for a "stated period" of 90 days, it is there neither passed nor rejected, the Dáil may, within 180 days, by resolution complete the process of making it law. At best, the Senate can do no more than delay an ordinary bill for a period of three months, provided the Dáil cares to take prompt action after the lapse of the "stated period"; indeed, the stated period may itself be shortened in respect to a particular bill if the president joins with the Dáil in

[1] Eleven of the remaining senators are named by the prime minister and three are chosen by the graduates of each of the two universities.

[2] The first president elected (in May, 1938) was the 77-year-old Dr. Douglas Hyde, long a professor of Gaelic at University College, Dublin.

declaring an emergency. As under cabinet systems generally, there is no executive veto. In two situations, however, the president may withhold promulgation of a measure: (1) except in the case of money bills, "urgent" bills, and bills to amend the constitution,[1] any bill whose constitutionality is in doubt may be referred to the supreme court for an opinion (to be rendered within 30 days), and will not be promulgated at all if the verdict is unfavorable, and (2) any bill (with the same exceptions) which has been passed only by virtue of the Dáil's deciding power in cases of dispute between the houses may be submitted to a popular referendum if a majority of the Senate and not less than one-third of the members of the Dáil join in so requesting; and the measure will be promulgated only if the people approve it—or, as an alternative, if, after dissolution, a new Dáil also passes it.[2]

NORTHERN IRELAND

Still closely bound to Great Britain, yet endowed with home rule—and missing no opportunity to proclaim full satisfaction with the arrangement—Northern Ireland is governed under the Government of Ireland Act of 1920, as modified chiefly by a supplementary measure of 1922 passed in anticipation of the six counties' decision not to allow themselves to be absorbed into the Free State.[3] In the matter of autonomy, the region stands somewhere between the position of Scotland and that of a self-governing dominion. It has its own parliament, as Scotland does not; but its powers of independent action fall considerably short of those that can be exercised at Ottawa or Canberra. Though under

[1] For three years after installation of the first president (1938), the constitution may be amended by ordinary statute Thereafter, a bill for amendment, after passing (or being deemed to have passed) the two houses, must be submitted to a popular referendum, becoming effective only if favored by a majority of those voting on it.

[2] Provision is made in the constitution for a council of state, with several members serving *ex officio* and others by virtue of special appointment On several matters, the president is required to consult this body rather than the cabinet, and among these are the referring of newly passed bills to the supreme court and to popular vote

Among further features of the governmental system which can only be mentioned here are (1) the extensive guarantees of civil rights contained in the constitution, (2) broad provision for judicial review of legislation, after as well as before statutes are put into operation, and (3) appointment and removal by the central government of all paid officials of the 27 administrative counties and of boroughs—local areas which otherwise have governments very similar to those of corresponding areas in Great Britain.

For fuller accounts of the adoption and characteristics of the new constitutional system, see A W. Bromage, "Constitutional Developments in Saorstát Eireann [the Free State] and the Constitution of Eire," *Amer. Polit Sci Rev*, Oct and Dec, 1937, and various anonymous articles in the *Round Table*, June, 1937, to Sept, 1938

[3] The texts of the fundamental laws will be found in [British] Foreign Office, *The Constitutions of All Countries*, I, 5–18

a home rule régime, representation at Westminster continues (13 seats). Originally elected under a system of proportional representation, the local House of Commons (52 members) has since 1929 been chosen in single-member constituencies,[1] under suffrage and other arrangements resembling those in Britain. A Senate consists of two *ex officio* members and 24 other persons elected for eight years by the lower house, under a scheme of proportional representation with the single transferable vote. If the House passes a non-money bill which the Senate rejects, and repasses it in the succeeding session, the governor, as chief executive, may convoke the chambers in joint sitting, and thereupon the issue is decided by a majority vote, the commoners, of course, having a decided numerical advantage. In the case of money bills, the second chamber may reject, but not amend. If, however, the House of Commons refuses to acquiesce, a joint sitting, which settles the fate of the measure, takes place in the same session. All executive power continues to be vested in the king, but is exercised by a governor, through a group of responsible ministers constituting a cabinet, on the plan familiar throughout the Commonwealth of Nations.[2]

NATURE OF THE BRITISH EMPIRE

Great Britain and Northern Ireland have a combined area of 95,000 square miles and a population of approximately 46,500,000. The British flag, however, flies over a total of 14,000,000 square miles and a population of 500,870,000—more than a quarter of the habitable area, and nearly a quarter of the inhabitants, of the globe. Historically, this far-flung congeries of lands and peoples and civilizations has been known as the "British Empire," and in common parlance it is still spoken of as such.[3] Perhaps there is no better term by which

[1] Except that the four members representing Queen's University, Belfast, are still elected under the proportional plan.

[2] A. Quekett, *The Constitution of Northern Ireland*. Part I, *The Origin and Development of the Constitution* (Belfast, 1928), Part II, *The Government of Ireland Act, 1920, and Subsequent Amendments* (Belfast, 1933), and N. Mansergh, *The Government of Northern Ireland, A Study in Devolution* (London, 1936).

[3] The term never received legal definition until within the past few years. A statute of 1932 applies it to "His Majesty's dominions outside the United Kingdom," including India, British protectorates, and territories over which a mandate of the League of Nations is exercised by the government of either the United Kingdom or a dominion In a more general way, the United Kingdom itself is, of course, to be regarded as included The Empire's heterogeneity is pictured vividly in A. J. Toynbee, *The Conduct of British Empire Foreign Relations Since the Peace Settlement* (London, 1928), 3–8; and an admirable account of its lands and peoples will be found in C B. Fawcett, *A Political Geography of the British Empire* (Boston, 1933). For a detailed classification of the constituent areas, see A. B. Keith, *The Governments of the British Empire* (New York, 1935), 18–25.

are given stronger assurance of such government; (7) that British economic interests are safeguarded meticulously, and (8) that the new constitution, "heavily weighted against radicalism and democracy," can be amended only from London, whence it came.[1]

2. CROWN COLONIES Next, there are the so-called crown colonies. The term is less useful than it once was, because wide differences of political organization have grown up among the dependencies to which it is applied. Speaking broadly, these numerous colonies are alike in that they have comparatively few inhabitants of European descent and are not considered capable of self-government on approved British lines. But, as in the case of Bermuda and the Bahamas, they may have an elective lower chamber and an appointive upper one; like British Guiana, the Straits Settlements, and Kenya, they may have a legislative council consisting of a single house, partly elective and partly appointive, like Hongkong and British Honduras, they may have a council which is wholly appointive; or, like Gibraltar and St. Helena, they may have no legislative body at all. There is a tendency for such colonies to rise in the scale; but progress is slow, and military or naval considerations frequently play as important a part as anything else in determining the status assigned them.[2]

3. PROTECTORATES Then there are the protectorates, which, although included in the Empire under the recent official definition cited above, are not, in law, British territory, and are subject to British control only in their external relations and (at least so the theory goes) in their domestic affairs in so far as necessary to assure due regard for the rights of foreign states. Of protectorates, there formerly were more than at present. Various developing African territories have passed through this stage into something else; Egypt, indeed, after existing unwillingly as a protectorate from

[1] Portions of the Government of India Act of 1935 are reprinted in R. K. Gooch, *Source Book*, 352–365, and a very large part of it in [British] Foreign Office, *The Constitutions of All Countries*, I, 243–329. The measure is analyzed clearly in H. McD Cloke, "The New Constitution for India," *Amer. Polit. Sci. Rev.*, Dec., 1936, and A. B Keith, *The Governments of the British Empire*, Chap xi, and fuller treatment will be found in J P Eddy and F H Lawton, *India's New Constitution* (London, 1935), and G N Joshi, *The New Constitution of India* (New York, 1937). The best book on arrangements existing under the act of 1919 is C P. Ilbert, *The Government of India* (Oxford, 1922), and on the country's constitutional history since the early seventeenth century, A B Keith, *A Constitutional History of India* (London, 1936). Cf. W. R. Smith, *Nationalism and Reform in India* (New Haven, 1939).

[2] A. B. Keith, *The Governments of the British Empire*, Chap vi, C R. Buxton, "The Government of Crown Colonies; The Development of Self-Government," *Polit. Quar.*, Oct.–Dec., 1938

1914 until after the World War, was in 1922 proclaimed "an independent sovereign state," even though independence is considerably qualified by the recognition of special interests on the part of the British Empire and by the presence of a British military force. Other divisions of Africa, notably Northern Rhodesia, Uganda, Nyasaland, Bechuanaland, and Somaliland, still fall in the category of protectorates; as do also native principalities in India pending their joining the new federation. The status of protectorate is often a preliminary to annexation; and in some cases, *e.g.*, Bechuanaland and Swaziland, British control over internal affairs is so extensive as to leave little room for distinction from colonies.[1]

4. MANDATES

The peace arrangements at the close of the World War added still another class of territories for which, although again not legally parts of the Empire, some degree of responsibility is nevertheless assumed, *i.e.*, the mandates. Mandates, too, differ among themselves; but the general principle underlying them is that the mandatory state shall be answerable for the peace, development, and general well-being of the areas assigned to it, and shall make periodic reports of its trusteeship to the League of Nations. Some mandates associated with British authority—*e.g.*, Palestine, Tanganyika, and British Togoland—are under the direct control of the London government, the administration of their affairs being one of the newer tasks of the Colonial Office. Others are allocated to certain of the dominions, *e.g.*, former German Southwest Africa to the Union of South Africa and former German New Guinea to Australia.[2]

IMPERIAL CONTROL OVER THE DEPENDENCIES

In differing degree, but to a large extent in all cases, the dependencies are governed from London, or at all events by authorities sent out from that quarter. Where there are local legislatures, there is, of course, a certain amount of locally enacted legislation, subject to veto by the governor or disallowance from London. Most legislation for the crown colonies comes, however, from the imperial capital. Some of it is enacted by Parliament, usually on subjects of broad importance throughout the Empire as a whole. Most of it, however, takes the form of orders-in-council, applying either generally or to particular colonies as designated.[3] Executive and admin-

[1] A. B. Keith, *op. cit.*, Chap. viii.

[2] A. B Keith, *op. cit.*, Chap. x. For the sake of completeness, it should be mentioned that Great Britain shares the rulership of a few areas with some other state. The most notable example is the Egyptian Sudan, which since 1899 has been under the condominium of Britain and Egypt.

[3] The power of making law for the crown colonies is, it will be recalled, a surviving feature of the royal prerogative.

istrative authorities range from the king and cabinet through certain of the ministries or executive departments to the governor and his subordinates in the individual colony. It is hardly necessary to say that the sovereign, although considered an indispensable symbol of imperial unity, has personally no more to do with colonial affairs than with War Office matters or finance. The cabinet, naturally, has much to do with them, especially as to larger lines of policy And of course two of the departments—the Colonial Office and the India Office—give all of their time and attention to the affairs of the domains within their respective jurisdictions. Judicial establishments are created and regulated by imperial law, judges being recruited almost entirely from the governing country. From all dependencies, appeals can be carried to the judicial committee of the privy council in London—an agency which, in the absence of any single system of law or of law courts throughout the Empire as a whole, nevertheless (through the advice which it gives to the crown on the disposition of appealed cases) is able to preserve some common standards of jurisprudence.[1]

RISE OF THE "COMMONWEALTH OF NATIONS"

Seventy-five years ago, many Englishmen believed not only that colonies were of doubtful value, but that such overseas dependencies as Canada and the Australian settlements would grow to nationhood and then fall away from the mother country. As the nineteenth century entered its closing decades, however, a different attitude developed. Various writers, notably Sir John Seeley, expounded the history of the Empire in a fashion to stir pride in the past and ambition for the future.[2] Simultaneously, the growth of nationalism and militarism in Continental Europe led the

[1] The judicial committee as it now stands dates from 1833. It includes the Lord Chancellor and any former incumbents of his office, the seven lords of appeal in ordinary, the Lord President of the Council, and other privy councillors who hold (or have held) high judicial office, among them varying numbers of judicial personages connected with overseas superior courts Addressed formally to the crown, appeals are heard, and recommendations as to the disposition of them are made, by the committee (actually in each instance by a panel of five members), and the judgment against which an appeal is brought is sustained or reversed by the crown in accordance with the recommendation made Without being such in form (since it is not technically a court, but only an advisory body), the judicial committee serves as a supreme tribunal for all British and British-controlled jurisdictions for which that function is not performed by the House of Lords See p 339 above. Cf. F. A. Ogg, *English Government and Politics* (2nd ed.), 758–762, A B Keith, *Constitutional Law of the British Dominions*, 265–277.

[2] See especially Seeley's *The Expansion of England*, published in 1883. Cf. R. Muir, *The Expansion of Europe* (Boston, 1917), Chaps VII–VIII

British government to put a new value on the colonies as sources of supplies and as potential allies. Already some of the areas were far advanced in self-government, and nothing was more certain than that as time went on there would be further development in that direction. This, however, from the new viewpoint, did not necessarily imply independence; it need involve nothing more than progressive readjustment of the relations between colonies and mother country, while all remained under a common flag and loyal to a common crown. For reasons both of sentiment and of interest, the colonies reciprocated, and from about 1870 much effort was devoted, on both sides, to finding some form of organization that would reconcile a large measure of autonomy on the part of the colonial governments with a considerable degree of unity in imperial affairs. The principal practical problems were as to (1) where to draw the line between matters to be regarded as colonial and those to be regarded as imperial, and (2) how to draw it, *i.e.*, whether in a hard and fast manner by constitutional stipulations or loosely and flexibly on a basis of voluntary cooperation and agreement, and proposals ranged all the way from mere preferential trade agreements to the admission of the colonies to a direct share in some sort of supergovernment centering at London. As early as 1887, the subject was taken up at an imperial conference attended by prime ministers and other representatives of the British and colonial governments. Other such meetings were held in 1897, 1902, and 1907; and on the last of these occasions a permanent advisory and consultative organization was brought into existence, with a view to a meeting every four years.

CONTRIBUTION OF IMPERIAL CONFERENCES

It is in successive imperial conferences, particularly the more recent ones, that the unique relationships of the United Kingdom and its co-equal associates in the Commonwealth of Nations have mainly been worked out. Some progress had been made before the World War. But it was the free and generous assistance given the mother country by the colonies in that great time of need that finally clinched their claims not only to a more direct voice in the conduct of Empire foreign affairs, but to further freedom in the management of their own relations with foreign states, and to a clearer recognition of their domestic autonomy. The Conference of 1921 agreed that events during the war years had completely established the right of the self-governing colonies to be considered co-equals with the mother country in foreign affairs. That of 1923 took steps, in rela-

tion to treaty-making, to make this right effective. That of 1926 was signalized by the preparation of a memorable document, known as the Balfour report,[1] in which the self-governing areas under the British flag (including the United Kingdom itself) were described as "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the crown, and freely associated as members of the British Commonwealth of Nations"; and the report went on to apply the formula by suggesting essential steps—some of them requiring the repeal or amendment of existing statutes—by which the declared equality might be reconciled with the bed-rock principle of imperial unity.

THE STATUTE OF WESTMINSTER (1931)

Finally, an imperial conference of 1930, adopting recommendations made by a preliminary conference in the previous year, cleared the way for the enactment by Parliament in 1931 of a momentous measure, the Statute of Westminster, establishing as law many fundamental regulations concerning the status of the dominions—in domestic, imperial, and foreign affairs—previously resting only on convention. In the nature of the case, the whole matter has been one of almost infinite complexity and difficulty, and even now many highly important problems remain unsolved. In the following pages, however, the situation as at present existing will be described as clearly as may be on the basis of the Westminster statute.[2]

THE DOMINIONS AND THEIR GOVERNMENTS

Of all the self-governing areas associated with the United Kingdom in the Commonwealth, only two—Canada and New Zealand—are by his-

[1] See *Summary of Proceedings of the Imperial Conference of 1926* Cmd 2768 (1926)

[2] The developing relations of the self-governing colonies with the United Kingdom to the period of the World War are fully and clearly described in H D Hall, *The British Commonwealth of Nations* (London, 1920). The subject is brought down to 1931 in W Y Elliott, *The New British Empire* (New York, 1932), and still farther in R A. Mackay, "Changes in the Legal Structure of the British Commonwealth of Nations," *Internat Conciliation*, No. 272 (Sept., 1932), and K C Wheare, *The Statute of Westminster* (London, 1933). See also G E Palmer, *Consultation and Cooperation in the British Commonwealth* (Oxford, 1934), R M. Dawson, *The Development of Dominion Status, 1900–1936* (London, 1937), J. Stoye, *The British Empire, Its Structure and Its Problems* (London, 1936), and W I Jennings, "The Constitution of the British Commonwealth," *Polit Quar*, Oct.-Dec., 1938 For numerous pertinent documents, including the Statute of Westminster, see A. B Keith, *Speeches and Documents on the British Dominions, 1918–1931* (London, 1932), E. Salant, *Constitutional Laws of the British Empire* (London, 1934), and W. I. Jennings and C. M. Young, *Constitutional Laws of the British Empire* (London, 1938). The Statute of Westminster will be found in R K Gooch, *Source Book*, 399–441.

torical designation "dominions."[1] Four others, however, were termed such in the Statute of Westminster and other recent documents, and accordingly there were, until recently, six in all—two (Canada and Newfoundland) in North America; three (Australia, New Zealand, and South Africa) in the southern hemisphere; and one (the Irish Free State) at Britain's own door. At the present time, the number is, instead, four, for the reason (1) that, following an investigation by a royal commission into its weakened financial condition, Newfoundland in 1934 voluntarily relinquished self-government and dominion status and permitted the management of its affairs to be turned over to a group of civil service experts appointed by the British crown,[2] and (2) that, as pointed out above, the former Irish Free State has, as "Eire," attained such a degree of independence that it cannot properly be regarded any longer as a dominion. On the other hand, Southern Rhodesia is now not very far short of dominion status; a new dominion of East Africa appears to be in the making; and the Labor party would give dominion ranking to India. Of the existing dominions, all have been peopled predominantly by English-speaking folk; all, too, are far advanced in the art of self-government. Among their governments, the student of comparative politics can find plenty of interesting and significant differences; yet, for purposes of a bird's-eye view, all are pretty much of a pattern. In every case, there is a written constitution, drawn up and adopted locally, although originally effective only by virtue of having been enacted by the British Parliament in the form of a statute. The youngest member of the group—South Africa—is, under terms of the Statute of Westminster, free to amend its constitution independently; in the case of Canada, every amendment, and in that of Australia every one altering the relations between the states and the federal government, must be enacted in the form of a statute at London—normally, in pursuance of request made by the government of the dominion concerned.[3] In every dominion, the crown is represented by a governor or governor-general, who since

[1] The title "dominion" owes its origin to the Conference of 1907, which adopted it as a device for distinguishing from the dependent empire the areas enjoying responsible government

[2] This is the only instance in which a dominion has been demoted, even temporarily, to the level of a mere dependency. See R. A. MacKay, "Newfoundland Reverts to the Status of a Colony," *Amer. Polit. Sci Rev.*, Oct., 1934. With their affairs in an improved condition, the people of the island are now beginning to ask for a restoration of their former status.

[3] These two dominions have federal systems of government, and the ultimate check from London upon amendments is designed for the protection of the provinces or states.

the Imperial Conference of 1930 bears precisely the same legal relations to the dominion government that the king himself sustains with the British government. In every case, the cabinet system exists and operates on lines substantially like those prevailing at London. In every case, too, there is a bicameral parliament. The second chamber is made up variously—by appointment (Canada), by popular election (Australia), by election by provincial legislatures (South Africa)—but the lower house is in all instances chosen in substantially the fashion that a person familiar with English political usage would expect. One rather fundamental difference of form appears. Some of the dominions have unitary governments, some federal. New Zealand shows no trace of federalism, South Africa, although created by uniting separate political areas, has a government that does not quite qualify as federal; Canada and Australia, likewise built up from separate colonial areas or units, are definitely federal. Students of the workings and problems of federal institutions find the last-mentioned countries almost as fruitful fields of observation as is the United States.[1]

DOMINION AUTONOMY: 1. AS TO LEGISLATION

How far the dominions have of late travelled on the road toward complete autonomy will be apparent if we observe their present position with respect to (1) law-making, (2) executive authority, (3) judicial appeals, and (4) international relations As the self-governing colonies developed, the amount of legislation enacted locally naturally increased, while the British Parliament, although legally competent to make any and all laws for any and all parts of the Empire, gradually fell back, so far as the dominions were concerned, upon a policy of legislating only on matters on which the dominions were not themselves competent to legislate (because, for example, extending beyond dominion boundaries) or matters of Empire importance, *e g.*, nationality, extradition, and merchant shipping, which by their nature called for regulation

[1] The monumental work on the dominion governments is A. B Keith, *Responsible Government in the Dominions*, 2 vols (2nd ed., Oxford, 1928), but later treatises, and more easily used, are the same author's *Constitutional Law of the British Dominions* (London, 1933), Chaps v–xx, and *The Dominions as Sovereign States, Their Constitutions and Governments* (London, 1938) A still briefer account by the same author will be found in his *The Governments of the British Empire*, Chap iv. Lord Bryce, *Modern Democracies* (New York, 1921), I, deals illuminatingly with Canada in Chaps xxxiii-xxxvii and with Australia and New Zealand in Chaps xlvi–lvii All of the pertinent constitutional texts will be found in [British] Foreign Office, *The Constitutions of All Countries*, I (London, 1938) Great Britain may herself be without a systematic written constitution, but the written constitutions in force in various parts of the Empire fill the whole of the volume cited (678 pages).

on uniform lines. There still are, and will continue to be, a good many laws, made at Westminster, which, in whole or in part, apply in the dominions as in other portions of the British realm. But the circumstances under which such legislation will in future be enacted have of late been profoundly altered. For some time it had been an accepted convention, not only that laws made at Westminster should in no case be regarded as applying to the dominions unless their texts so stipulated, but also that legislation affecting the dominions ought to be passed only after consultation with the various dominion governments. Under terms of the Statute of Westminster, no act of the British Parliament passed after the taking effect of that measure is to be construed as extending to any dominion unless the act itself expressly declares that the given dominion "has requested and consented to" the enactment thereof.[1] Furthermore, by the same statute, all dominion parliaments are empowered to repeal or amend any British act (or any rule, order, or regulation made under such act) in so far as it has been part of the law of the dominion. And the Westminster statute itself declared certain existing laws, or parts of laws, thenceforth inapplicable in the dominions generally.

The other side of the matter relates to legislation which the dominions themselves enact; and here the changes under the Statute of Westminster are at least equally significant. Formerly, every bill passed in any dominion required the assent of the crown, given normally through the governor or governor-general in the dominion, under responsibility to the British "government," *i.e.*, the cabinet at London; and measures might be (although they infrequently were) vetoed by that official, acting on his own judgment or under instructions. Bills sometimes, however, were "reserved," *i.e.*, sent to London for final decision—except in the cases of Canada and the Irish Free State. And any bills—except again in the case of the Free State—might be disallowed from that quarter. To be sure, the wishes of the dominion parliaments were, in later times, rarely thwarted in any of these ways. But the power was always there. Nowadays, however, the situation is different in two important respects. In the first place, although in his capacity of representative of the king (no longer of the British "government") the governor-general still formally assents to all dominion legislation, he would no more think of interposing a veto than would his counterpart in Buckingham Palace, and the device of reservation has virtually disappeared. In the second place, whereas formerly inconsistency of a dominion

[1] South Africa has, indeed, gone farther by enacting in 1934 that no measure passed at Westminster after December 11, 1931, shall be deemed to extend to the Union unless so extended by an act of the Union parliament.

statute with British common or statutory law was the usual ground for veto or disallowance, under the Statute of Westminster no law or provision of any law made by a dominion parliament after the taking effect of that act may be held void or inoperative on the ground that it is "repugnant to the law of England, or to the provisions of any existing or future act of the Parliament of the United Kingdom, or to any order, rule, or regulation made under any such act"; and this practically puts an end to the theory, to say nothing of the actual practice, of disallowance. So far as the making of their own laws is concerned, the dominions are now, therefore, absolutely free. If laws made at Westminster after 1931 are to apply to any one of them, the dominion must have "requested" that they do so; and even at that, it is at all times at liberty to repeal or amend such laws (except only the Statute of Westminster itself) in so far as applicable within its own boundaries. Under these arrangements, considerable diversity of law is likely to arise, entailing problems with which the future will have to deal.[1]

2. AS TO EXECUTIVE AUTHORITY

On the executive side, one finds interestingly reflected that dualism resulting in Britain itself from the rise of a responsible cabinet alongside a previously powerful king. Until 1930, the governor-general, while regarded as the personal representative of the sovereign, was an appointee of the British "government," *i.e.*, the cabinet, and chief administrative agent of that authority in the dominion. By a decision of the Imperial Conference of the year mentioned, however, this official was relegated to a merely nominal headship, precisely analogous to that of the king in the British system, and nowadays he is appointed and removed by the king directly—on the advice of his ministers, to be sure, but the ministers of the *dominion*, not the British ministers. This development left the British cabinet without the customary agent in the dominion through whom to deal. But already it was not unusual for correspondence to pass directly between the British prime minister and the corresponding authority in the dominion, and nowadays this is the procedure—except that on all but the most important matters the channel of communication is rather between the Secretary of State for Dominion Affairs at Whitehall and the respective dominion ministers for external affairs In addition, the dominions are generally represented by high commissioners in London, and since 1928 British high commissioners have been stationed in some of the dominion capitals. The formal, nominal line

[1] On the general subject of imperial control over legislation, see A. B Keith, *The Constitutional Law of the British Dominions*, Chap II.

of control runs, therefore, from Buckingham Palace by way of the governor-general's mansion in the dominion capital to the dominion cabinet room; the line of actual control—so far as there is control at all—runs, however, from Downing Street straight to the same terminus.[1]

3. AS TO JUDICIAL APPEALS

Turning to the domain of justice, one finds the dominions equipped with courts and procedures, which, although strongly reflecting English precedent, are to a very great degree independent; dominion judges, too, are almost invariably dominion men. The only external check upon the courts is the judicial committee of the privy council, to which, under varying conditions, appeals may be carried from the highest court of every dominion.[2] It is not surprising that as autonomy grew, dominion sentiment developed in favor of curtailing or entirely discontinuing such appeals. The highest dominion courts, it was argued, were entirely capable of exercising final jurisdiction; appeal to London threw powers of final determination into the hands of a body which in principle was English and alien, and likely to be insufficiently conversant with dominion conditions;[3] such appeals, further ran the argument, were expensive, thereby placing poorer litigants at a disadvantage. As early as 1888, Canada sought to cut off appeals in criminal cases, but was not permitted to do so. Australia, in 1900, presented for approval at London a constitution making no provision for appeal, but was required to allow one to be inserted. South Africa's constitution of 1909 started off by forbidding appeals from the decisions of the dominion supreme court, but ended by permitting them from that tribunal's appellate division.

If the truth be told, the matter is at present surrounded with a good deal of uncertainty. The Balfour report recommended that a uniform set of regulations be agreed upon, but no progress toward that end has as yet been made; even the Statute of Westminster goes no farther (though this is significant) than to put in legal form the right of each dominion to choose its own final court of appeal. In

[1] H. V. Evatt, *The King and His Dominion Governors* (Oxford, 1936) contains a full treatment of the status and powers of the governors.

[2] Sometimes in pursuance of recognized right, when certain conditions exist (*e.g.*, when values to a given amount are in dispute); sometimes by leave of the dominion court, when in its opinion the question involved ought to be submitted to the king-in-council, sometimes by special permission received from the judicial committee itself.

[3] The dominions can be, and in fact are, represented in the membership of the judicial committee (until 1928, by a maximum of seven; nowadays without limit, although at present only about 10 persons are actually eligible). Few such representatives, however, are in London at any given time, and no salaries are provided for service there.

Canada, it is legally possible for appeals to be carried to London in all cases; in Australia and South Africa, the right of appeal is restricted in varying degrees by constitutional provisions, in the case of the former Irish Free State (present Eire), appeals were so frequently rendered meaningless by nullifying legislation (passed either in anticipation or in consequence of a judgment), or by sheer disregard of their results by the Dublin authorities, that even before the Irish parliament unilaterally terminated the right of appeal, the judicial committee adopted the policy of refusing to stultify itself by hearing appeals from that quarter at all. Meanwhile, appeals from some of the dominions, particularly Canada, are fairly numerous, and although it is to be presumed that the Irish precedent establishes a right of any dominion, under the Statute of Westminster, to cut off all appeals, much can be said for continuance of the practice, especially in respect to cases turning on questions affecting religion, language, or race, and on constitutional issues between federal and state governments.[1]

4. AS TO INTERNATIONAL RELATIONS.

Up to a point, the Empire, including the dominions, is a single state, in both municipal and international law. That point, however, is soon reached, and beyond it the self-governing areas are substantially free and independent nations. The official name for the group is now, as we have seen, British Commonwealth of *Nations*. From this general fact arise several notable features of the dominions' position internationally—a position, be it observed, which is practically the same for all members of the group. In foreign affairs as in defense, said the Imperial Conference of 1926, "the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain." Even then it was recognized, however, that all of the dominions were engaged to some extent—some to a considerable extent—in the conduct of foreign relations, and in later years their rôle in this respect has been extended quite a bit further. To begin with, as matters now stand, all are free to accredit their own ministers to foreign governments (also to send consuls), and to receive ministers accredited in turn by such governments. The Irish Free State set the pace in 1924 by accrediting an envoy extraordinary and minister plenipotentiary to the United

A. SENDING AND RECEIVING MINISTERS

[1] A. B Keith, *The Governments of the British Empire*, 56–64, and *Constitutional Law of the British Dominions*, 265–281, and for fuller treatment, N. Bentwich, *The Practice of the Privy Council in Judicial Matters* (3rd ed., London, 1937), and H. Hughes, *National Sovereignty and Judicial Autonomy in the British Commonwealth of Nations* (London, 1933)

States, receiving on its part a minister from this country. Australia and New Zealand (also Newfoundland while yet a dominion) have not as yet chosen to be represented in this way, but Canada and South Africa have accredited ministers to a few countries with which their relations are most extensive. In all cases, the envoy from the dominion, accredited by the governor-general, is the ordinary channel of communication on affairs relating solely to his own country, while matters of general imperial concern, or affecting other members of the Commonwealth, continue to be handled by the minister or ambassador of the United Kingdom.

B. MAKING TREATIES

In the next place, the dominions are empowered to conclude treaties—under certain limitations. Treaties are ordinarily supposed to be made only by sovereign and independent states. As early as 1923, however, Canada not only set up a claim to separate treaty-making authority, but actually concluded a halibut-fisheries treaty with the United States, which, as being of concern only to the two American neighbors, was signed only by a Canadian, and not a British, representative.[1] With this precedent established, the Imperial Conference of 1923 laid down the general principle that treaties, whether commercial or political, might be negotiated, signed, and ratified separately by any dominion government,[2] provided that no other part of the Empire was affected and that any other government in the Empire likely to be interested was consulted; and this remains the rule today. In 1926, the important additional principle was agreed to that no dominion may be bound by any treaty not signed by delegates empowered to act for it.[3]

C. PARTICIPATING IN OR ABSTAINING FROM WAR

The fact that a community of British subjects cannot be at peace with a foreign country with which Great Britain is at war, or at war with a country with which Great Britain is at peace, suggests a considerable degree of surviving unity in international affairs. Even here, however, limits are soon reached, because since 1926 it has been expressly conceded that there is both an "active" and a "passive" belligerency, and that while it remains true that when Great Britain is at war all regions under the British flag are at least passively belligerent, a dominion is the sole judge of the nature and

[1] For the documents, see A. L Lowell and H. D Hall, *The British Commonwealth of Nations* (Boston, 1927), 639-645. Another instance of the same thing was the Great Lakes-St. Lawrence Deep Waterway Treaty signed at Washington on July 18, 1932 (although not yet ratified by the United States).

[2] Always, however, in the name of "His Britannic Majesty."

[3] R. B. Stewart, "Treaty-Making Procedure in the British Dominions," *Amer. Jour. of Internat. Law*, July, 1938.

extent of its own coöperation—that is, of whether it will be an active belligerent as well. The distinction between active and passive belligerency is a convenient means of reconciling imperial unity with dominion autonomy—at all events on paper—and one can imagine circumstances, *e.g.*, abstention by Canada from a war between Great Britain and Afghanistan, under which it might be applied in practice without causing ill feeling In a war of large proportions, however, there could hardly fail to be resentment toward any member of the Commonwealth undertaking to remain aloof.

D. MEMBERSHIP IN THE LEAGUE OF NATIONS

To the particularistic arrangements thus outlined must be added the further significant fact that all of the dominions (and, indeed, India as well) have independent membership in the League of Nations. Most of them were represented separately in the Paris Peace Conference of 1919, where, with full assent of the British government, they decided to insist upon League membership in their own right, and although provocative of misgivings in non-British circles, including the United States, their claim could not be denied.[1] Some people saw in the arrangement evidence that the historic British Empire was breaking up, and this impression was strengthened when dominion delegates at Geneva began pursuing independent and contrary lines of action when they did not happen to be in agreement with the policy of the government at London Such freedom of action was, however, taken for granted in British and dominion circles, and has indeed been regarded by the well-informed as a source of imperial strength, in the sense, at all events, that any attempt to force all parts of the Commonwealth into a single channel of action would produce protest and dissension out of all proportion to the benefits accruing. Some of the dominions have played prominent rôles at Geneva, both Canada and the Irish Free State having had seats in the League Council.[2]

[1] All of the then existing dominions except Newfoundland became original members The Irish Free State was admitted in 1923. It will be recalled that Greater Britain's six votes in the League Assembly (seven after 1923) was a principal ground on which membership in the League was opposed in the United States

[2] In addition to references already cited on the international status of the dominions, the following should be noted: A. B Keith, *Constitutional Law of the British Dominions*, Chaps III-IV, XVI, *The Governments of the British Empire*, Chaps III-IV, and *Dominion Autonomy in Practice* (Toronto, 1930), A. J. Toynbee, *The Conduct of British Empire Foreign Relations Since the Peace Settlement* (London, 1928), P. J. N. Baker, *The Present Juridical Status of the British Dominions in International Law* (London, 1929), and R. M. Dawson, *The Development of Dominion Status, 1900–1936* (London, 1937). W. I Jennings and C M. Young, *Constitutional Laws of the British Empire* (London, 1938), is a convenient compilation of statutes and judicial decisions relating to dominion status.

THE FUTURE OF THE EMPIRE

Three-quarters of a century ago, as observed above, there was a good deal of doubt among Englishmen as to whether the Empire as it then stood would endure. The loss of the American colonies suggested that as other possessions waxed stronger they too would mature and, like ripe fruits, fall from the imperial tree. Perhaps something of the kind is, after all, going to occur. Already the Commonwealth, as described in the foregoing pages, is in essence a league of independent states; without having definitely severed connection with it, the former Irish Free State has in effect divested itself of dominion status; and another member of the family, South Africa, manifestly covets more autonomy than such status has been supposed to imply.[1] After all, however, there still stands at the center a political entity, the United Kingdom—more populous than all the rest combined, itself a great European power and world power, master of a far-flung empire of dependent peoples, prepared to go on bearing practically the entire expense of defending the dominions on the high seas and from external attack, affording them facilities for economic connections not easily obtainable elsewhere—and, considerations of prestige and sentiment entirely apart, most of the self-governing peoples would think twice before accepting complete legal independence if it were offered them. Nor is there prospect that any such offer will be made. There are still Little Englanders, just as there are still men who, although devoted to the imperial ideal, can see no escape from the Empire's eventual dissolution. But one will search in vain through the official pronouncements of the three great political parties for proposals or promises looking to the setting adrift of the crown colonies, India, or the dominions. The Labor party—certainly the least "imperialistic" of the three—favors "the closest cooperation between Great Britain and the dominions," the elevation of India to dominion status, and the preparation of "indigenous peoples for full self-government at the earliest practicable date" But it has at no time suggested dismantling the Empire. In all parties, and in all sober discussion, the emphasis is upon ways and means of adjusting the internal and external relations of the Empire, broadly conceived as including the Commonwealth, in better accordance with the new world conditions of the twentieth century, and par-

[1] It is commonly considered that, legally, no dominion has a right to withdraw, or "secede," by its own independent action. In some quarters, however, a contrary view is held; the former Free State has approached perilously close to taking a step of the kind, and no one supposes that if any member of the group should in the future deliberately decide upon withdrawal, the others would go so far as to use armed force to prevent it from doing so. On the general subject, see A B Keith, *Constitutional Law of the British Dominions*, Chap IV.

ticularly of the post-war period. As for the dominions, the Statute of Westminster is regarded as marking a long step—with others, to be sure, remaining to be taken—in the direction thus marked out That the Empire will go on is taken for granted.

METHODS OF CONSTITUTIONAL GROWTH

The fact has been noted that there is no written constitution either for the Empire as a whole or for the Commonwealth. It is doubtful whether there ever will be one. But this does not mean that there is not a great and growing body of imperial constitutional law—to say nothing of imperial conventions or customs as well. How such law and custom develop must be evident from the foregoing pages. Take, for example, the matter of dominion participation in the management of foreign relations. No longer ago than 1911, Prime Minister Asquith was heard stoutly maintaining that the responsibility of the British government in such weighty matters as formulating foreign policy, making treaties, declaring war, concluding peace, and, indeed, in dealings of every form with foreign powers, could not be shared. The experiences of the World War led, however, to the adoption of a different attitude. The Imperial War Conference of 1917 pronounced all of these activities of common concern to the Empire, and therefore matters in which action was to be cooperative The resolution of the Conference to this effect was accepted by the British government as a working principle, whereupon the Imperial Conferences of 1923 and 1926 took the next logical step by working out rules and methods for giving effect to the plan, the government again accepting them and thereby giving them validity. Within the space of a decade, the entire scheme of imperial foreign relations was revolutionized—not by formal act of Parliament, nor yet by unilateral action of the London executive authorities, but by conference, resolution, and informal assent.

In similar fashion have come most other recent changes in interimperial relationships, and from the same process must be expected to flow all of the greater understandings and readjustments by which the Empire will continue to preserve the harmony, and also build the machinery, necessary to its survival. Thus the Empire feels its way along the tortuous path of its existence, developing its rules of action as it goes Its scheme of life at any given moment contains much that is illogical, and even incongruous. But readers of earlier chapters of this book will recognize in the procedure the same practical-minded meeting of problems as they arise which made the living, expanding British constitution what it is today, and will

understand that logic and symmetry are—in the Britisher's world, at all events—not essential to serviceableness and durability.[1]

[1] The present character and outlook of the Empire are dealt with from various points of view in A. Zimmern, *The Third British Empire* (London, 1927), W. P. Hall, *Empire to Commonwealth* (New York, 1928), L. H. Guest, *The New British Empire* (London, 1929), W. Y. Elliott, *The New British Empire* (New York, 1932), *The British Empire, A Report on Its Structure and Problems by a Study Group of Members of the Royal Institute of International Affairs* (London, 1937), W. K. Hancock, *Survey of British Commonwealth Affairs* (London, 1937), J. A. R Marriott, *The Evolution of the British Empire and Commonwealth* (London, 1939). *The Round Table*, a quarterly review published in London since 1911, is indispensable for students of Commonwealth politics.

CHAPTER XXI

The Rise of Constitutional Government

TO THE present point, our attention has been fixed upon the parent system in a galaxy of governments operating in the widely scattered English-speaking areas of the earth. If consistent with our plans, we could now turn to other interesting systems in that group—Canadian, Australian, South African, and, high on the list, the system of the United States as well. Without going outside the bounds mentioned, we could bring to view an amazing variety of institutions, processes, and procedures richly significant for the student of political life and affairs. It so happens, however, that our task in this book is to survey and compare the outstanding governments of the European world; and hence, instead of taking passage across broad oceans, we have only to traverse the 18 miles or less from Dover to Calais to find ourselves in the next country whose political system is to have our attention.

WHY THE GOVERNMENT OF FRANCE IS TO BE STUDIED NEXT

Our study of Continental governments begins with the French for a number of reasons. Not only was France the first country, apart from England, to take on the characteristics of a modern national state, but it is today one of the nations of foremost rank—one of the few clearly entitled to be regarded as a "world power." More important, it has set the pace, speaking historically, for the political development of all Western and Central Europe, having, to be sure, been outrun in certain phases of twentieth-century democracy by a number of other states, yet holding an unchallengeable position as chief Continental interpreter of the letter and spirit of parliamentary institutions. For many lands, *e.g.*, Italy, Spain, and Belgium, the governmental and legal system now centering in Paris is as truly the parent system (or, at all events, *was* such until the rise of certain dictatorships) as is the English system in relation to the Anglo-

American world. Elsewhere—in Switzerland, the Netherlands, and newer states like Czechoslovakia, Poland, Yugoslavia, and Finland—this same system has on many occasions served as a model. Even in lands as dissimilar as Germany, Scotland, Rumania, the Latin American republics, and our own American state of Louisiana, its influence is unmistakable. Furthermore, France is still a parliamentary democracy, and therefore to be bracketed with Great Britain as against the three other countries whose dictatorial governments are to be treated in later portions of this book. In any event, French and English governments bear enough resemblance to each other to be studied most effectively in close conjunction, being sufficiently alike to make comparisons apt and instructive, and yet sufficiently different, not only in their mechanisms but in the traditions behind them and in the spirit and outlook of the peoples who operate them, to make contrasts interesting and sometimes startling. It is with Whitehall and Westminster and boroughs and justices of the peace fresh in mind that an American is most likely to grasp the full significance of L'Élysée and Palais Bourbon and prefects and *juges de paix*.

THE FRENCH REVOLUTION AS A FORCE IN EUROPEAN POLITICAL HISTORY

Disraeli is reported to have said on one occasion that there are only two events in history—the siege of Troy and the French Revolution. The remark was, of course, a whimsicality, yet it was true at least to the extent that the political and social upheaval which set eighteenth-century France on the high road to becoming the virile and enlightened Third Republic of today can be left off no list of great historic occurrences, however brief. The Revolution drew a line across French history such as never was drawn athwart the history of Britain—at all events, not after the time of the Norman Conquest. It released impulses which not only turned the political life of all western Continental Europe into new channels, but, despite the protests of Burke and other horrified Englishmen, exerted considerable effect upon English political thinking and practice as well. The waves of its influence have reached the most distant parts of the earth, and even yet, despite the backwash of absolutism in these later days, have by no means spent their strength.

Far-reaching, however, as were the Revolution's repercussions, it must not be supposed that it marked a complete break with the past, even in France. There never is anything of that sort in a people's history. Without doubt, the French government of today is to a

greater extent a product of what the French regard as the modern era, *i.e.*, since 1789, than is the English. But a good deal has been carried over from earlier times; and on this account, as well as because the old institutions furnish a useful basis for measuring the new, a word is in order about the country's political heritage as it stood before the storm of revolution broke.

GOVERNMENT UNDER THE OLD RÉGIME

To begin with, the government of the Old Régime was an absolute monarchy. Gathering strength in the hands of strong-willed monarchs such as Philip Augustus, Louis IX, and Philip the Fair (French counterparts of William the Conqueror, Henry II, and Edward I in England), the royal power reached its apogee in *le grand monarque*, Louis XIV, in the second half of the seventeenth century—a king who subordinated everything to dynastic interests, who surpassed all contemporary despots in his sense of unbounded and irresponsible dominion, and who went out of his way to show his gratitude to the bishop-courtier Bossuet for writing a book expounding the theory of absolute monarchy by divine right. "We hold our crown from God alone," reads an edict of Louis XV in 1770; "the right to make laws by which our subjects must be conducted and governed belongs to us alone, independently and unshared." Custom had, indeed, given enough sanction to certain principles, *e.g.*, those regulating the succession to the throne, to establish a presumption that the king himself was bound by them; and in point of fact ministers were sometimes really more powerful than the sovereign. The theory of royal supremacy was, however, perfectly clear; and practice, as a rule, did not lag far behind. In an earlier feudal age, government and administration throughout the country were carried on largely by semi-independent lay and ecclesiastical magnates. Long before 1789, however, they had passed into the hands of a numerous, centralized, bureaucratic body of royal officials,[1] directed from Paris by leading members of the king's council—especially the chancellor, the controller-general of finances, and the secretaries of state for the royal household, foreign affairs, war, and marine. Members of this close-knit hierarchy, high and low, recognized no responsibility to the people for their acts; and although some tradition of local self-government survived, chiefly in the communes, there was little enough of it in practice.

LACK OF A NATIONAL PARLIAMENT

Furthermore, there was nothing whatever in the nature of a national parliament. To be sure, the Estates General had come into being—in the

[1] Notably the *intendants* of the *généralités* and their assistants, the *sub-délegués*

very same centuries in which the English Parliament arose. But in the first place, this gathering (unlike the English) had never outgrown the form and character of a mediaeval assemblage of "estates," or orders. It sat in three separate bodies, or chambers, one representing the nobility, one the clergy, and a third the *tiers état*, "third estate," or substantial middle class; and of course the first two could always prevail as against the third. In the second place, it never gained broad powers of independent deliberation. And finally, whereas the English Parliament now met every year, the Estates General had from the first been convened at extremely irregular intervals, which grew gradually longer, until after 1614 it was summoned no more at all until financial necessity forced the government's hand in 1789. Regional estates survived in Burgundy, Brittany, Languedoc, and a few other provinces; but they had little initiative or vitality.

A RÉGIME OF PRIVILEGE

In addition, the entire political system was shot through with inequality and privilege. So arbitrary and capricious was the government, de Tocqueville tells us, that it not only "incessantly changed particular regulations or particular laws," but even at any given time was unable or unwilling to apply the laws uniformly and impartially to all of the people. There were no reliable guarantees of personal freedom; under a *lettre de cachet*, or "sealed letter," any one might be arrested summarily and held in prison until it suited the convenience of the authorities to inquire into the merits of his case. In return for a small collective *don gratuit* (which sometimes was not actually paid), the clergy as a class was exempt from taxation. The nobles had indeed lost local administrative powers which their ancestors had exercised as feudal lords, but they paid only such nominal taxes as they bargained with the officials to pay; and both they and the clergy enjoyed many additional privileges, including a monopoly of high national offices and honors and the feudal, customary right of exploiting the peasantry—even that considerable portion of it which owned the soil that it tilled.[1]

[1] The political condition of France in the eighteenth century is described succinctly in C. D. Hazen, *The French Revolution* (New York, 1932), I, Chap. III, and more fully in E. J. Lowell, *The Eve of the French Revolution* (Boston, 1892), Chaps I, II, VIII. Notable books by French authors dealing with the general state of the country, including government, are A. de Tocqueville, *L'ancien régime* (Paris, 1850), trans. by H. Reeve under the title *State of Society in France before the Revolution of 1789 and the Causes which Led to that Event* (new ed., Oxford, 1894), and H. A. Taine, *Les origines de la France contemporaine. L'ancien régime* (Paris, 1876), trans. by J. Durand as *The Ancient Régime* (New York, 1876).

THE PHILOSOPHERS AND THEIR CRITICISM OF THE EXISTING ORDER

The government of the Bourbon kings was thus autocratic, wasteful, corrupt, and burdensome; and in 1789 a tide of protest which had long been rising swept over the head of the luckless Louis XVI and engulfed the entire political and social structure on which the monarchy rested. In no small degree, the public mind was prepared for action by the writings of a remarkable group of critics, essayists, dramatists, and novelists, commonly referred to as the *philosophes*. Beginning with the light satire of Montesquieu's *Persian Letters* (1721), a running fire of literary and philosophic discussion of the existing order of things—in government, law, the church, education, economic organization, and practically everything else—advanced by stages to the bold and bitter sarcasm of Voltaire in his famous *Philosophic Dictionary* (1764) and his *Essay on Republican Ideas* (1765). Criticism of this sort is sometimes merely destructive. In the present instance, however, it was not so. Many of the philosophers pointed their arguments eagerly and hopefully toward a general reconstruction of the social order—government included—on principles of reason and justice.

THEIR POLITICAL IDEAS

On political lines, the new thought naturally showed a good deal of diversity. Voltaire, aristocrat by birth and temperament and indifferent to the claims of democracy, favored continuing the absolute power of the king, insisting only that it be used to bring about social and economic reforms and to keep public affairs on a rational basis. Montesquieu, believing that the superior character of the English system of government arose mainly from a division of powers among substantially independent executive, legislative, and judicial authorities, disapproved of absolutism and argued for a separation of powers, even though he thought that in a large country like France the monarchy ought to be decidedly strong.[1] The more plebeian and radical-minded Rousseau, starting with the concept of a primeval state of nature in which men led a care-free, non-social existence, and assuming that government was originally created by voluntary contract, developed the doctrine that sovereignty resides only in the body politic, that law is the expression of the public will, that government is established by the sovereign people as its agent to execute the law, that the ideal state would be one in which all functions of government were discharged by the people acting directly, and that where, as in any large state, some scheme for delegating authority

[1] *De l'ésprit de lois* ("The Spirit of Laws"), published at Geneva in 1748

or imprisonment except according to the forms prescribed by law; freedom of religious belief; freedom of speech; freedom of writing and of the press, participation (personally or through a representative) in the voting of all taxes, and immunity of property from confiscation except under legally ascertained public necessity, and after suitable compensation.

3. WRITTEN CONSTITUTIONS

A third contribution was the device of a written constitution. Until late in the eighteenth century, fundamental, or as we should now say constitutional, law commonly rested almost entirely—as ordinary law also very largely did—upon custom, and hence rarely found its way into writing. True, the parliamentarians who defeated Charles I in arms and temporarily suppressed monarchy in England hit upon the notion of a written constitution; and two such instruments were actually put into operation, one in 1653 and the other in 1657.[1] This development, however, was sporadic; and, as we have seen, the historic English constitution has never to this day, as a whole, been reduced to written form. Nevertheless, outside of England, liberal-minded eighteenth-century political thinkers and leaders became convinced of the practical utility of a written fundamental law setting forth explicitly the principles, forms, and restrictions under which a particular government was to be carried on. The idea commended itself to the French reformers particularly, partly because the promulgation of a written constitution, newly decreed by the sovereign nation, seemed in the nature of a renewal of the social contract (then widely regarded as the origin of all government), and partly because a written constitution was a very obvious and practical means of informing the people as to what their rights were and of inspiring general respect for them. In addition, there was the example of America, where, within the space of hardly more than a decade, two national constitutions and more than a dozen state constitutions had been put into operation by direct or indirect authority of the people.

In accordance with demands voiced in many of the *cahiers*,[2] the National Assembly of 1789 early turned its attention to preparing a constitution. The resulting document (prefaced by the Declaration of Rights of 1789) was completed only in 1791. From that time forth, however, France—notwithstanding her numerous political shifts and turns—lived at all times under a written fundamental law. She, furthermore, became—so far as Continental Europe is con-

[1] See p. 13 above.

[2] Statements of grievances drawn up by the local bodies which chose the deputies

cerned—the mother of written constitutions. During two decades of conquest and expansion, she covered all Western Europe south of the Baltic with constitutions which she had herself made, or which at all events were modelled on one or another of her own fast-appearing fundamental laws, and by the time when her power receded to its earlier limits, the idea had been indelibly impressed upon the liberal elements of Germany, Italy, Spain, and other lands that a prime requisite of popular freedom is written organic law.[1]

4. REPUBLICANISM

A fourth important contribution of the Revolution was the conception of republicanism as a practicable form of government for France, and hence, by implication, for other large and venerable European states. The relative merits of republican and monarchical political systems had been a subject of discussion from Plato and Aristotle onwards, and notable experiments with republican government had been made by the early Greek cities, by pre-imperial Rome, by the Italian city states of the Middle Ages, by the Dutch provinces, by Switzerland, by England at the middle of the seventeenth century, and, more recently, by the United States of America. As a group, the eighteenth-century philosophers favored monarchy. Montesquieu conceded that no single form of government is best under all conditions, but held that a republic presupposes not only a small territory but a high level of public virtue and an absence of luxury and large fortunes. Rousseau believed democracy workable only in small and poor states. Voltaire, too, thought of republicanism only in terms of Greek city states and Swiss cantons, and said that the regeneration of France must come from enlightened and benevolent kingship. Turgot considered all so-called republics of the past to have been only "vicious aristocracies in disguise," and argued that monarchy is best adapted to promote the general happiness of mankind.

The establishment of the American republic aroused considerable interest in France, but it did not turn the current of political reform into republican channels. The *cahiers* of 1789 voiced no demand for a republic. The National Assembly was thoroughly monarchist, and the constitution which it promulgated in 1791 provided for a continuance of monarchy, even though tempered and liberalized. The trend of events, however, presently started a good many people thinking about a republic. By the end of 1790, there was somewhat of a republican party; by midsummer of 1791, the radical elements

[1] On written constitutions in general, see pp. 22–24 above, also W. A. Dunning, *Political Theories from Rousseau to Spencer*, 248–291. The subject is considered in relation to France in A. Esmein, *Éléments de droit constitutionnel* (8th ed., Paris, 1927), I, 603–648

were turning rapidly to the new doctrine; and although the Legislative Assembly, which served to all intents and purposes as the government of France during the brief life of the constitution of 1791, remained predominantly monarchist, the attempted flight of the king, the efforts of the court to secure military aid abroad, and the conduct of the *émigrés* made the suppression of kingship inevitable, and, by the same token, the rise of a republic, to remedy the "vacancy of power," a certainty. In September, 1792, the newly chosen Convention, convinced that no other course was feasible, unanimously decreed the abolition of monarchy and the establishment of a democratic, unitary republic. During the next few years, the republican gospel was carried by French armies and reformers into all surrounding lands, and new or reconstructed republics sprang up on every side; and although these creations mostly perished, and the parent republic itself gave way before the imperial aspirations of Napoleon, republicanism as a creed and a program took a place in European political life which it had never held before.[1]

5 THE DOCTRINE OF POPULAR SOVEREIGNTY

Another thing that the Revolution did was to bring the idea of popular sovereignty into more general and practical acceptance than in the past. The concept, to be sure, can be found in Aristotle, as a theory, it underlay not only the Roman Republic, but the Empire as well, it was propounded in the fourteenth and fifteenth centuries by writers like Marsiglio of Padua and Nicholas of Cusa; and shortly before the Revolution it received its classic expression in France at the hand of Rousseau But after 1789 it found more literal and fruitful application in France than anywhere else in Europe up to that time. The old representation of orders in the Estates General was replaced by representation of the nation as such, and as a whole. The entire population was consolidated into one body politic, and the deputy sent up to Paris, once having been elected by his constituents, was conceived of no longer as a mere agent and spokesman of a class or interest, but as a representative of an integrally sovereign nation, composed of people who were not only separate political entities, but also political equals. Representative government was for the first time placed upon something approaching its present-day basis.[2]

[1] H. A. L Fisher, *The Republican Tradition in Europe* (New York, 1911), Chap. iv. The fullest and best account of the growth of republicanism during the French Revolution will be found in F A. Aulard, *Histoire politique de la révolution française* (Paris, 1901), trans by B. Miall under the title of *The French Revolution, A Political History* (London, 1910), II, Chaps II–IV

[2] See C A. Beard, *The Economic Basis of Politics* (New York, 1923), Chap. III.

6. THE THEORY OF SEPARATION OF POWERS

Finally, the Revolution gave new meaning and scope to another time-honored theory, *i.e.*, the separation of powers. More or less separation of powers had, of course, existed in various earlier European governmental systems; and in America, both a national government and a dozen state governments had been organized with careful regard—too careful, we now strongly suspect—for this principle. Now for the first time in Europe, however, there was a deliberate attempt to build up governments resting upon separation, and upon the companion principle of checks and balances which Montesquieu likewise had elucidated and endorsed. Legislative, executive, and judicial functions were looked upon as fundamentally dissimilar, and as likely to be performed most satisfactorily if entrusted to different hands. Even the monarchist constitution of 1791 showed the influence of this idea; and every later fundamental law, whether French or merely influenced by France, was phrased more or less consistently in accordance with it.

POLITICAL INSTABILITY, 1789–1875

Having severed her most obvious political ties with the past, France in 1789 entered upon what proved a very prolonged period of readjustment and experiment. More than three-quarters of a century were required to bring the ship of state out of the tempestuous waters of the Napoleonic, Restoration, Orleanist, and Second Empire régimes into the haven of the Third Republic; and, as we shall see, even this haven was none too secure during the first two decades or more of the present republic's history. Between 1789 and 1875, one form of government after another was tried, but always with unsatisfactory results; of six different written constitutions put into operation, not one lasted more than some 18 years.[1] To be sure, political arrangements in the local areas throughout the country were not uprooted every time that there was a change of constitutions at Paris. On the contrary, the new governmental and administrative institutions which departments and communes received at the hands of the Revolutionary assemblies, and of Napoleon, underwent a steady and orderly development throughout the entire period. But the history of national government in these decades is a remarkable story of stops and starts, of swings backward and lurches forward, which

[1] The texts of all French constitutions (with other fundamental laws) since 1789 are brought together conveniently in L. Duguit et H. Monnier, *Les constitutions et les principales lois politiques de la France depuis 1789* (5th ed. continued by R. Bonnard, Paris, 1931). English translations are presented in F. M. Anderson, *Constitutions and Other Select Documents Illustrative of the History of France, 1789–1907*, already cited.

gave the Englishman—forgetting how long France had lived under a single plan of government, and how unstable his own political situation had been in the seventeenth century—a chance to wag his head and remark dolefully (or was it sometimes exultantly?) upon the Frenchman's lack of capacity in political matters.[1]

"Nearly all of the forms of government which have succeeded each other in France," remarks a French writer, "have left behind them, as it were, certain fertile alluvial deposits";[2] and while it is not feasible to describe the successive systems in detail, a running outline of them will help us to see how the present republican order fits into the general picture.[3]

THE CONSTITUTIONS OF 1791, 1793, AND 1795

Constitution-making during the Revolution began, as we have observed, with the drafting of the fundamental law prefaced by the Declaration of Rights of 1789 and put into operation in 1791. The authors of this document were moderate reformers, who wrote into it provisions for a limited monarchy, with ministers subject to impeachment, and with a unicameral parliament indirectly elected for two years in the newly created departments by male citizens 25 years of age and upwards who paid direct taxes equal to the value of three days' labor. The system was by no means democratic enough for leaders like Robespierre and Danton who were now coming into control; besides, the situation was soon ripe for a republic. Accordingly, in 1793, a much more radical constitution was drawn up, providing not only for a republic but for direct elections, manhood suffrage, primary assemblies of citizens to consider proposed laws, and a plural national executive consisting of a committee of 24 members. This became the first constitution outside of America to be submitted to a popular vote; and it was adopted. Before it could be put into effect, however, a period of terrorism gave the political wheel a new turn; and when the country presently found itself governed under another fundamental law, that law proved to be a decidedly more conservative instrument, drafted in 1795, and also adopted by popular vote, after the Terror had passed and the radicals had lost control.

[1] "A very droll spectacle," said Montesquieu, "it was in the last century to behold the impotent efforts of the English towards the establishment of democracy . . . The government was continually changing. . . . At length, when the country had undergone the most violent shocks, they were obliged to have recourse to the very government which they had so wantonly proscribed." F. W. Coker, *Readings in Political Philosophy* (New York, 1914), 456.

[2] J. Barthélemy, *The Government of France*, trans. by J. B. Morris (New York, 1925), 15.

[3] For a useful tabular view of French constitutional development, see J. R. Starr, *Topical Analysis of Comparative European Government* (Minneapolis, 1934), 94–95.

THE NAPOLEONIC DICTATORSHIP

This "constitution of the Year III" had considerable merit, and might have been expected to last—especially as the Revolution was now over, the republican régime becoming stabilized, and the new government in a position to start off with a good deal of vigor. In four short years, however, it went the way of the others, primarily because the country's foreign wars brought to the front a national leader who had no use for popular constitutions, and who coveted an amplitude of power that the existing instrument would not have allowed. Having made himself dictator by a *coup d'état* of 1799, "Citizen Bonaparte" proceeded to give the nation a frame of government more to his liking. Two drafting commissions were employed, and various features were taken over from the political writings of the contemporary statesman Siéyès; but the ideas behind the new scheme were those of the young Corsican.

NAPOLEON'S CONTRIBUTIONS TO FRENCH GOVERNMENT

One of these ideas was that if there was to be a written constitution, it should be brief and general, leaving plenty of elbow-room for the public authorities, and hence the constitution of 1799, besides being less than a quarter as long as that of 1795, was conveniently vague, or even silent, on many vital topics. Another thought was that the powers of the legislature should be reduced sharply and those of the executive correspondingly increased; and the new plan, if not deliberately framed with a view to single-handed rule, took such form as certainly to make that sort of rule easily possible. All executive power was entrusted to three consuls, elected by the Senate for ten years; the First Consul was given the real power, his colleagues having only a "consultative voice"; and Napoleon saw to it that he was himself named in the instrument as First Consul. As for the bicameral parliament set up in 1795, its functions were thenceforth divided among four different bodies—a Council of State to prepare measures, a Tribunate to give them preliminary consideration, a Legislative Body to vote on them, and a Senate to pass on their constitutionality. This seemed a beautiful balancing of functions. But it worked out—as it was intended to do—so as not to interfere with an almost unrestricted control of public affairs by the First Consul. To all intents and purposes, France had again become a monarchy. The veil was partially withdrawn in 1802 when Napoleon was made First Consul for life; it was torn away completely two years later when he assumed the title of emperor. The fact that this last move was submitted to a popular vote, and cheerfully endorsed, shows not only that the Corsican was master of the situation, but that the French people were not as yet truly converted

to republicanism. In point of fact, two more generations of arduous political experience were required to bring the nation to the point of giving republican government reasonably united and dependable support.

The foundation of French institutions today, writes a French scholar quoted above, is provided by the social, legal, judicial, and administrative system of the Napoleonic Empire.[1] Gathering more and more power into his own hands, first as consul and later as emperor, Napoleon used it not only in carrying on wars and managing foreign relations, but in reorganizing local government and administration, codifying and nationalizing the law, reorganizing the relations of church and state, and otherwise putting the French house in order—so successfully, indeed, that in many important matters, *e.g.*, the law codes, no very great changes have proved necessary at any later time. Undoubtedly it is Napoleon the warrior that holds the highest place in French sentiment and legend; but it is Napoleon the statesman whose handiwork, less dramatic but more enduring, is mainly to be seen by the visitor to France today. In only one respect (though certainly a vital one) were the political arrangements devised by Napoleon out of line with the best thought and achievement of later times: in all branches of the government, they rigidly restricted or entirely eliminated the element of popular control. It remained for various later political régimes to infuse the breath of democracy into the institutions which he had created, until finally the Third Republic crowned them with the present machinery of parliamentary government.

GOVERNMENT UNDER THE RESTORED BOURBONS (1814–30)

Driven by military reverses, Napoleon abdicated in 1814; and by agreement of the victorious allied powers, the Bourbons were restored to the throne in the person of Louis XVIII. Naturally, the nations that had striven so long to break the rule of the Man of Destiny had no mind to see his style of government perpetuated, and Louis was pledged in advance to a limited constitutional monarchy patterned somewhat closely on that of England. Local government, the law codes, and much besides, suffered little change; but the national government took a fresh start.

We now encounter a most instructive illustration of how difficult it is to transplant a body of political institutions to an alien soil

[1] J. Barthélemy, *The Government of France*, 15. It will be found interesting and profitable to compare the objectives and techniques of Napoleon's dictatorship with those of Hitler's dictatorial rule in Germany and Mussolini's in Italy. See Chaps. xxxvii–xxxix, xli–xlii below, and cf. K. Loewenstein, "The Dictatorship of Napoleon the First," *South Atlantic Quar.*, July, 1936.

—how difficult, at all events, to make such institutions take root and thrive. The new French "constitutional charter" endowed the king with large powers of ordinance-making, appointment, treaty-making, and declaring war. But ministers were provided for, and were not only to be subject to impeachment, but also to be "responsible," presumably in the English sense. No tax might be levied and no law made without the assent of Parliament, which again was organized on the basis of two coordinate houses. To be sure, the crown enjoyed the sole right to initiate legislative measures, and the chambers could merely petition that a bill on a given subject be submitted. To be sure, also, the electoral laws confined the suffrage to propertied men 30 years of age or over. Nevertheless, the plan was decidedly more liberal than any associated with the name of Napoleon.

THE ORLEANIST RÉGIME (1830–48)

The new system may possibly not have been too advanced for the French people, but it was far in the van of Bourbon ideas. Louis XVIII never really understood or accepted it; and his brother, Charles X, who succeeded him in 1824, came into fatal collision with it. Trying to keep in office a ministry that did not have the confidence of the Chamber, and seeking to break the resulting parliamentary deadlock by measures plainly in violation of the constitution, Charles brought upon himself the revolution of 1830, and lost his throne.[1] There still was little republican sentiment in the country, and the situation was patched up by crowning the easygoing and democratic Louis Philippe, of the House of Orleans, as king. The occasion was seized, however, to revise the charter so as to remove the implication that it was simply a grant from the king—an act of royal grace—and to liberalize the government in sundry ways, chiefly by giving both branches of Parliament the right to initiate legislation.

THE SECOND REPUBLIC (1848–52)

Still matters failed to go well. Somehow the parliamentary system would not work as it worked on the other side of the Channel. The trouble was, of course, that instead of two great parties, each able, upon the defeat of the other, to command a definite parliamentary majority and to assume undivided responsibility for running the government, France had a *mélange* of party or factional groups, no one of which could often boast, or at all events long retain, control of the Chamber. The energies of even the best statesmen were consumed in futile bickering; government was uninspiring, times were drab; the country seemed to be merely drifting. For 18 years, things went from

[1] N. E Hudson, *Ultra-Royalism and the French Restoration* (Cambridge, 1936), is an excellent study of the period 1815–30.

bad to worse, the nation all the while growing more discontented; and in 1848 a new revolution, engineered partly by men who were interested in reviving a republican form of government, and partly by others who were thinking chiefly about ushering in a socialistic order, toppled the unimpressive Orleanist régime into the dust.

Once more France became a republic, and this time with a constitution showing unmistakable influence from America. The document, as prepared and adopted by a popularly elected national assembly, not only declared the people sovereign, but proclaimed a separation of powers the first requisite of free government. For a legislature, it was decided to go back to the plan of a single large chamber, elected by something approaching manhood suffrage. But, carrying out the idea of separation, executive authority was entrusted to a president of the Republic, chosen directly by the people, by secret ballot, for a term of four years, and reeligible only after an interval of equal length. Powers conferred upon the president were quite comparable with those of the president of the United States; and while ministers were provided for, their status was left so vague that no one could tell whether or not they were to be regarded as responsible to Parliament after the manner of a true cabinet government. Certainly the tendency was to swing away from the English cabinet system, so clearly envisaged in the charter of 1814, in the direction of the presidential system prevailing in the United States. The nation might not want a king; but it must have a strong executive—one that would supply the active leadership in which kings often fail.[1]

FROM SECOND REPUBLIC TO SECOND EMPIRE

Events soon showed that France was not so fully committed to republicanism as had been supposed. The first test came on the election of a president. Unfortunately, there was, among the active leaders, no outstanding person to whom the nation could instinctively turn, as Americans turned to Washington in 1789, or as Frenchmen themselves turned to Thiers in 1871. The situation was one in which the unexpected could easily happen, and what actually did happen was that Louis Napoleon, ambitious and crafty nephew of Napoleon I, dramatically returned to the country from England, secured election to the National Assembly, announced himself a

[1] The revolution of 1848 and the government of the Second Republic are dealt with in H. A. L. Fisher, *Republican Tradition in Europe*, Chap. VIII, L. N. Curtis, *The French Assembly of 1848 and American Constitutional Doctrine* (New York, 1918); and A. R. Calman, *Ledru-Rollin and the Second French Republic* (New York, 1922).

candidate for the presidency, and wound up by being chosen to the office by an overwhelming majority. Of course even a Bonaparte might conceivably have contented himself with the very considerable prestige and power that went with the new position. But this particular member of the family had no mind to do so. He did not want to retire to private life at the end of a petty four-year term; more than this, he coveted the glory of an imperial title.

There were evidences that the people, too, were not much attached to the new order. When, indeed, the first parliament was elected, two-thirds of its members turned out to be avowed monarchists. It was not, therefore, difficult for the president to maneuver the situation to his own advantage; and when, after three years—the end of the constitutional term being in sight—a *coup d'état* gave the country a revised constitution extending the term to ten years, there was little protest. Thenceforth, all was plain sailing; though still nominally existent, the republic was really dead. Near the end of 1852, all disguises were thrown off. A *senatus-consultum* decreed the reëstablishment of the Napoleonic empire, and the people, asked to approve what had been done, responded favorably by a vote in the proportion of forty to one. The plebiscite was a favorite device of both the first and the second Napoleon; and it is significant that no proposal ever submitted by either ruler failed to receive the desired endorsement.[1] Much clever manipulation was, of course, practiced. At all events, on December 2, 1852—anniversary of the battle of Austerlitz, and therefore a red-letter day in Bonapartist annals—Napoleon III was proclaimed emperor of the French.[2]

GOVERNMENT UNDER THE SECOND EMPIRE

Ostensibly, the Second Empire rested upon liberal principles, and the forms of democracy were preserved—for example in a one-house *Corps Législatif*, or parliament, elected by direct and fairly broad suffrage. In reality, however, the régime was nothing but a personal dictatorship supported by the army. The powers allowed the Legislative Body were, at best, meager, and the stage was purposely set to keep it in the background. An aristocratic Senate—in no true sense an upper chamber—was made the interpreter and guardian of the constitution; and the emperor was endowed, not only

[1] Cf. Hitler's use of the plebiscite in Germany. See pp. 755–756 below.

[2] "Napoleon II" was assigned as a posthumous title to the young king of Rome, only son of Napoleon I. The collapse of the Second Republic is to be attributed in considerable measure to the fact that political liberalism was tied up with radical ideas on the reorganization of society inspired by the Industrial Revolution, now in full swing in France. The bourgeois and the thrifty looked upon Napoleon III as a guardian against the monster of socialism, much as corresponding elements in Italy later looked to Mussolini as a defender against bolshevism.

with full control of the administration, sole direction of foreign affairs, and unrestricted command of the army and navy, but with power to declare war and conclude peace, and—what was even more important—sole power to propose the measures to be acted on by the Legislative Body. Furthermore, every trace of the cabinet system was obliterated by making the ministers responsible only to the emperor, who, of course, selected them with a free hand. The result was a highly centralized government in which Napoleon III wielded power hardly less despotic than that of his uncle half a century earlier. Even such restraints as might otherwise have been imposed by an elected parliament were fended off by deft manipulation from Paris at election time, designed to ensure the victory of "government" candidates.

CRITICISMS AND REFORMS

For a decade, things went reasonably well. The country was once more prosperous; advanced social and industrial legislation held discontent in check; the people were dazzled by the magnificence of the court, and their pride was stirred by public improvements which drew the envious attention of all Europe. In time, however, the régime began to pall. Lavish expenditures meant increasingly burdensome taxes, the government's free-trade policy offended the manufacturers; its wars with Catholic states alienated religious sentiment; its insistence upon controlling local affairs down to the last detail defied every instinct of self-government; the atmosphere which it radiated was stifling, its attitude was often palpably insincere, and it was itself in many ways a sham.

Napoleon III was not the paragon of wisdom H. G. Wells has painted him, but he was no fool, and he tried hard to stay the tide of unfavorable opinion. Beginning in 1860, one concession after another strengthened the position of the *Corps Législatif* and advanced the revival of true parliamentary institutions. Liberty of press and assembly, long practically extinct, was gradually revived. In 1869, the meetings of the Senate were thrown open to the public, and the Legislative Body was authorized to elect its own officers. In 1870, even more significant steps were taken, when the Senate, hitherto hardly more than an imperial council, was erected into a legislative chamber coördinate with the Legislative Body (giving the country a bicameral parliament again for the first time since 1848) and, in addition, both houses were allowed the right to initiate legislation. Furthermore, the ministers were made responsible to the chambers instead of to the emperor; and the power to amend the constitution

was changed so as to require, in every case, a favorable vote by the people.

On paper, at all events, the autocratic régime of the second Napoleon was rapidly giving way to a political system comparable with the English—a system which, as we now can see, was destined to be realized in France itself in years that lay no great distance ahead Whether, under different circumstances, the changes would have saved the waning imperial order is uncertain. Assuredly they had not yet gone far enough to satisfy large numbers of reformers, many of whom, like the orator and parliamentarian Gambetta, had become ardent republicans. Certainly, too, Napoleon III was ill-fitted for the rôle of a constitutional monarch. But, as it was, the concessions—or most of them—came too late to be tested. Hardly were they made before the Franco-Prussian war broke out; and within a few short months the emperor, who had entered upon the conflict with incredible lightheartedness, was, along with the greater part of his army, a prisoner in German hands at Sedan.[1]

[1] The most adequate treatment of the constitutional changes of the period 1860–70 is H. Berton, *L'évolution constitutionelle du second empire* (Paris, 1900). H A L Fisher, *Bonapartism* (Oxford, 1908), is an illuminating study. The history of the last ten years of Napoleon III's reign is related at length in the monumental apology of Émile Ollivier, *L'empire libéral*, 17 vols (Paris, 1895–1914), reviewed interestingly in H. Fisher, *Studies in History and Politics* (Oxford, 1920), Chap. iii Cf M Deslandres, *Histoire constitutionnelle de la France de 1789 à 1870*, 2 vols. (Paris, 1932).

CHAPTER XXII

The Constitution of the Third Republic

WHEN Paris heard what had happened on the Meuse, the Second Empire forthwith collapsed. For a decade, it had lived mainly on appearances; and when these failed, it could not go on. The Napoleonic name was destined to stir French hearts on many a later occasion, and the Napoleonic legend remained a factor which to this day no student of French politics can wholly ignore. But as for Napoleon III, he simply passed out of the picture, his reputation shattered. Meanwhile, at the capital it fell to a little self-appointed group of Parisian parliamentarians of the Left, led by Gambetta and Favre, and already on record as desiring a republic, to take steps to remedy what Thiers aptly termed a "vacancy of power." Somebody must do something; and the previous leadership of these persons in the republican cause made it natural for them to assume the responsibility. From the Hôtel de Ville, two days after Sedan, they proclaimed a republic; and as speedily as possible a "provisional government of national defense" was constructed, charged with carrying on the business of state and pushing the war to a successful conclusion.[1]

THE PROVISIONAL GOVERNMENT OF 1870

On the military side, the task proved impossible. Following up the advantage gained at Sedan, the Germans pressed toward the heart of the country, encircled Paris, and, laying siege to the place, forced a surrender in January, 1871. In this new emergency, there was nothing to do but ask for an armistice, permitting the nation to elect an assembly empowered to decide whether to go on with the war or to seek peace, and on February 8, the desired intermission having been obtained, the elections took place throughout France and the colonies. Time was short, and the liberal electoral arrangements of the Second Republic were revived *in toto* for the occasion.

THE NATIONAL ASSEMBLY (1871)

[1] Compare the collapse of the German imperial government in November, 1918—also as a result of defeat in war, combined with popular dissatisfaction which eleventh-hour reforms failed to allay. In Germany, as in France, responsibility for the control of affairs devolved upon a hastily constructed provisional government, with the difference that at Berlin the expiring government officially passed on the torch of power to the new one. See p. 625 below.

Paris being in enemy hands, the new body held its first meetings in a theatre at Bordeaux. Its position was from the first extraordinary. The old imperial government—emperor, Senate, *Corps Législatif*, ministers—had disappeared. Furthermore, the provisional government, which had served the country well in the emergency, faithfully carried out its announced intention to dissolve as soon as it should have given the nation an elected assembly.[1] Consequently, the Bordeaux gathering found itself the legatee of all the governments that had gone before, with powers both undefined and unlimited. Furthermore, its members had been elected for no stipulated term. At once, therefore, the body became the supreme governing authority in the country; and for full five years an amazing combination of circumstances quite unexpectedly kept it in that rôle. As such, it made peace with Germany, enacted laws, levied taxes, controlled the military establishment, and finally prepared and put into effect the constitution under which the Third Republic lives today.

THIERS MADE "CHIEF OF THE EXECUTIVE POWER"

The Assembly could, of course, serve well enough as a legislature. But what about an executive? Under somewhat similar circumstances, the Long Parliament in England, the Continental Congress in America, and the French Convention of 1792–95 had kept executive functions in their own hands, exercising them through committees. The National Assembly of 1871 might have done the same thing. It, however, chose a course leading rather in the direction of a separate, even though controlled, executive, and bestowed upon the veteran historian and parliamentarian, Adolphe Thiers, the title and authority of "chief of the executive power." The idea of separation of powers probably had some influence in this decision, although the main consideration—inasmuch as an effort to get peace with Germany had been foreordained by the elections—was to give Thiers suitable prestige and authority in the coming negotiations. The separation did not as yet, however, go very far; for Thiers remained a member of the Assembly and could be directed, or even displaced, by it at any time.

THE QUESTION OF A NEW CONSTITUTION

Under these auspices, peace was negotiated and ratified. Its terms (laid down in the treaty of Frankfort) were hard, but the best that could be obtained; and the nation fulfilled them promptly and to the letter. Then arose the question of a permanent frame of government. Who

[1] For a study of the provisional government, see J. P. T. Bury, *Gambetta and the National Defense; A Republican Dictatorship in France* (New York, 1936).

should make the new constitution, and for what kind of a government should it provide? Should the existing National Assembly formulate the constitution, or should a new assembly be elected for the purpose? And was France to go on as a republic, or revert to monarchy?

Nobody had thought very much about these matters when the Assembly was elected. The one issue before the voters had been: Should the war be continued or terminated? On this, the nation had spoken unequivocally. But on constitutional and political questions it had had no opportunity to express itself except in an incidental and inconclusive way. Doubtless many people rather vaguely supposed that, after carrying out the country's mandate to obtain peace, the National Assembly would consider its work done and give way to another body specially chosen to frame a constitution. Many doubted or denied that the Assembly itself had any proper authority to undertake the task. As matters worked out, however, the question of authority became academic. Serving perforce as the government of the country during the months while peace was being negotiated, the Assembly became so engrossed in the management of public affairs that it neither desired to take its hand from the helm nor felt it could safely do so. Instead, it moved from Bordeaux to Versailles, and, after suppressing a menacing communard uprising in Paris,[1] settled itself to the task of giving the country the strong government that conditions obviously required, and also, as time and circumstance permitted (and eventually with the consent of all parties), to the business of framing a constitution.

MONARCHISTS AND REPUBLICANS

The question of whether the existing Assembly should make the constitution was tied up with the problem of the future form of government. There were, of course, both monarchists and republicans in the body. The former strongly predominated; of the 738 original members, hardly more than 200 were republicans. The number of republicans would undoubtedly have been larger but for the course of Gambetta and other republican leaders in opposing all thought of peace; many of their candidates had been defeated on this ground entirely, not because they were republicans; and the contemporary monarchist fling that France was "a republic without republicans" was clearly unfair. Nevertheless, it is exceedingly doubtful whether, if there could have been a genuine test, republican sentiment would have been found uppermost throughout the country. As it was, the As-

[1] In addition to being a radical social movement, the Commune was a protest against a centralized form of government, whether monarchist or republican. The communards wanted a system based on a federation of communes.

sembly was more than two-thirds monarchist, which at first glance seemed to assure that any constitution that came from its hands would be monarchist. Small wonder that most of the people who argued against the right of this particular agency to make a constitution were republicans!

The monarchists, however, were divided—irretrievably so, as events proved—and on that fact the fate of the republic hung. There were two main groups, and also a lesser one. The Legitimists, reactionary and clerical adherents of the old Bourbon monarchy, wanted to place on the throne the Count of Chambord, grandson of the Charles X who had lost his crown at the revolution of 1830. A party of Orleanists desired a restoration of the house of Orleans (overthrown in 1848), in the person of the Count of Paris, grandson of the citizen-king, Louis Philippe. And a small group of members who remained loyal to the Napoleonic tradition were bold enough to advocate a revival of the prostrate Second Empire, with the prince imperial, son of Napoleon III, on the throne.[1] "There is only one throne," observed Thiers, "and there are three claimants for a seat on it." The supreme object of the republicans was, of course, to prevent any one of the three from being seated; although obviously they would have been helpless if the monarchists could have composed their differences. As long as there was any serious chance that this would happen, the republican strategy was to prevent the framing of the constitution by the existing Assembly, in the hope of throwing the task into the hands of a new body specially elected for the purpose and better reflecting the republican sentiment of the country. That they had everything to gain by delay was evidenced in midsummer of 1871, when republicans were chosen to fill 100 out of 111 seats that had fallen vacant. And eventually matters so worked out that they did not need to pin their hopes to a new assembly; the entanglements of history finally forced the existing body to carry out their will.

THE RIVET LAW (1871)

Meanwhile the present frankly temporary scheme of government was not in all respects working smoothly. The main difficulty was the uncertain position occupied by Thiers and his ministers, and with a view to straightening out matters, a member of the Assembly by the name of Rivet brought forward a plan under which Thiers was to be made "president of the Republic" for three years and the ministers were to be declared responsible to the Assembly. The

[1] The lines were not drawn rigidly, but it is computed that at the outset there were some 200 Legitimists, 200 Orleanists, and 30 Imperialists. The remaining members were either republicans or of uncertain inclination.

obvious intention was to revive a cabinet system on the English model. The president, no longer removable by the Assembly, was to cease to be responsible (in the technical meaning of the term), and the ministers were to become the working, responsible executive. In general, the Assembly thought well of the proposal. It was not, however, prepared to go quite so far, and the "Rivet law" as passed on August 31, 1871, while giving Thiers the title of president and declaring the ministers responsible to the Assembly, enjoined that the president, on his part, should also be responsible. Creation of the presidential title was significant, and likewise the placing of responsibility upon the ministers; both steps looked in the direction of the system of later days. But for the time being there was little actual change. Thiers went on actively participating in the Assembly's proceedings—"a titular chief executive trying to be prime minister and floor leader as well"[1]—and cabinet government remained a name rather than a reality.

Eventually, however, the Assembly discovered the futility of trying to hold both president and ministers responsible, and turned its attention to maneuvering the president into a position which would permit of concentrating responsibility entirely in the ministers. Some advance was made in this direction early in 1873, when it was ruled that the president should no longer have the right to address the Assembly, and that thenceforth all interpellations or questions should be directed to the ministers. It was, indeed, suggested that Thiers should relinquish membership in the Assembly; although to this he strenuously and successfully objected.

RESIGNATION OF THIERS (1873)

One of the reasons for cutting off the president's right to mount the tribune was the dislike of the monarchist majority for the persistency with which Thiers harangued the members in behalf of the adoption of a republican constitution. Originally Thiers had himself been a monarchist, an Orleanist of the "right center." But the course of events had gradually brought him to the conclusion that a republic, as being "the form of government that divides us least," was the only practicable solution. He openly went on record to this effect before the end of 1872; and in May, 1873, Dufaure, vice-president of the council of ministers, presented to the Assembly a draft of a republican constitution with his full approval. Furthermore, when the monarchists succeeded in composing their differences long enough to carry a vote of want of confidence, in effect rejecting

[1] W B Munro, *Governments of Europe* (3rd ed.), 410.

the plan, he immediately resigned.[1] In his place the Assembly put a Legitimist sympathizer, Marshal MacMahon, who, being a non-member, and being also a soldier rather than a parliamentarian and orator, was expected to hold aloof from politics in a fashion now beginning to be regarded as becoming in a president.

FAILURE OF THE MONARCHIST PLANS

Time was manifestly working on the side of the republic, and the monarchists decided to make a supreme effort before it should be too late. A coalition ministry, headed by the Orleanist Duc de Broglie, started out to suppress republican newspapers and "purify" the civil service; and an ingenious compromise was devised whereby the Bourbon Count of Chambord was to be made king under the title of Henry V, and, he having no heirs, the Orleanist Count of Paris was to be recognized as his successor. At the last moment, however, the plan collapsed, for the reason that, while the Orleanists held out for the tricolor which had come into use as the national standard at the time of the Revolution, the Bourbon claimant refused to give up the white flag which for centuries had been the emblem of his own house. The republic was saved because Chambord deliberately "threw his crown out of the window." Even yet, not all monarchist hopes were abandoned; they certainly could not be realized in the immediate future, but perhaps in time the situation would change. Hence, in November, 1873, the Orleanists threw their support to a proposal to fix the term of President MacMahon at seven years, assuming that if within that rather extended period an opportunity should arise to place the Count of Paris on the throne, the monarchist president would clear the way by resigning—as indeed he very likely would have done. Such opportunity, however, never came, and the septennial period for the presidency, thus established by monarchists in their own interest, passed into the permanent constitutional machinery of a republican state.[2]

THE COMMISSION OF THIRTY

These various developments made it imperative that the Assembly actively take up the task of framing a constitution. If the republic was to go on indefinitely, it must be put on a more fixed and regular basis.

[1] F. M. Anderson, *Constitutions*, 622–627, G. Hanotaux, *Contemporary France*, trans. by J. C. Tarver and E. Sparvel-Bayly (New York, 1903–09), I, Chap. x, II, Chap. i.

[2] On the royalist claimants and activities of the period, see C. T. Muret, *French Royalist Doctrines Since the Revolution* (New York, 1933), Chap. x. Monarchist sentiment has persisted to the present day, and is now represented principally by the League for French Action, banned officially in 1936, but nevertheless surviving as a movement with a base in Belgium, and supporting as claimant to the throne the Duke of Guise, heir of both the Bourbon and Orleanist families.

fence, when voting MacMahon a seven-year term, the Assembly so provided for a commission, or committee, of 30 to work out *projet*, or draft. The work went rather slowly. There were two rly comprehensive plans with which to start—one being that eviously submitted to the Assembly by Dufaure, and another a ss liberal scheme presented by the Duc de Broglie.[1] But plenty of her plans and proposals came from both committee members and tsiders, and many months were required to whip a report into ape.[2] Even after the committee was ready, the Assembly was slow act; and it was only at the beginning of 1875, when the country as growing restless under the long delay, and when even Legitimist d Orleanist leaders were afraid of some kind of a Bonapartist *coup*, at debates on the proposed constitution were actively started.

E WALLON ENDMENT

The committee had been dominated by monarchists, and its plan looked, after all, not to a permanent republican constitution, but only to certain amount of reorganization—in particular, the establishment a bicameral parliament for the remaining portion of President acMahon's term. At the end of that time, the chambers were to eet in joint session and "decide upon the measures to be taken." his was cold comfort for the republicans. But one of their num-r, the Sorbonne professor Wallon, found an ingenious way of tting around the difficulty. When the first article, containing the ovision indicated, came up for discussion, he introduced an amend-nt, not indeed saying explicitly that the republic should be perma-nt, but indirectly accomplishing the same object by fixing the rm of the president at seven years and making him eligible for election.[3] Nobody failed to see the point to the proposal. There as to be another president after MacMahon, and another, and an-her, the republic was to go on indefinitely. Here was a real chal-nge, and everybody was agog. To a man, the Legitimists objected. it enough Orleanists were swung to the motion's support to give result of 353 votes in its favor to 352 opposed. The "Wallon

[1] One is reminded of the Virginia plan presented at the opening of the Phila-lphia convention of 1787, also the Preuss plan laid before the Weimar conven-n in Germany in 1919 See p 633 below.

[2] The unpublished minutes of the commission's proceedings are preserved in the hives of the Palais Bourbon, the building in which the Chamber of Deputies w sits

[3] "The president of the Republic is elected by an absolute majority of votes by the nate and Chamber of Deputies united as a National Assembly He is chosen for ven years, and he is reeligible" This became Art 2 of the Law on the Organiza-n of the Public Powers, adopted on February 25. The final vote on this particular icle was 413 to 248

amendment" prevailed, and thenceforth the presumption was that the instrument which the Assembly was arduously fabricating was to be, not a mere stop-gap agreement, but a permanent frame of government. Not without reason is the clever academic deputy from the Departement du Nord often portrayed by his countrymen as the father of the French constitution.

THE CONSTITUTION ADOPTED

After this, progress was more rapid; and presently the Assembly was ready to adopt two of the three "constitutional laws" which compose the country's written constitution today. The first one, voted February 24, covered the organization of the Senate; the second, adopted on the following day, provided for the president, the ministers, and the Chamber of Deputies. Both were carried by substantial majorities. The two together, however, left many gaps to be filled. To a degree, these were taken care of by the third law of the series, adopted on July 16, and defining the "relations of the public powers," especially of the president and ministers with the chambers; to a degree, also, they were supplied by a law of August 2 on the election of senators, another of November 30 on the election of deputies, and a number of other supplementary measures, not strictly "constitutional" laws, but rather, as the French would say, "organic" laws or acts.[1]

THE CONSTITUTION'S CHARACTERISTICS

The National Assembly had performed the task which it had set for itself [2]—but, remarks the principal French writer on the period, "how

[1] The texts of the three constitutional laws will be found in L. Duguit et H. Monnier, *Les constitutions*, 319–325, and in English translation in F. M. Anderson, *Constitutions*, 633–639, W. F. Dodd, *Modern Constitutions*, I, 286–294, H. L. McBain and L. Rogers, *New Constitutions of Europe*, 523–528, W. E. Rappard *et al.*, *Source Book on European Governments* (New York, 1937), Pt. II, pp. 8–14, and N. L. Hill and H. W. Stoke, *The Background of European Governments*, 241–246. Texts of the two organic laws mentioned are in Duguit et Monnier, 325–335, Dodd, I, 295–308, and McBain and Rogers, 529–540. The best account of the events of 1875 is G. Hanotaux, *Contemporary France*, III, Chaps. i–iii, and the antecedents of the constitution are surveyed pointedly in A. Esmein, *Éléments de droit constitutionnel* (8th ed., Paris, 1927), II, Chap. i. There is an interesting interpretation in H. A. L. Fisher, *Republican Tradition in Europe*, Chap xi See also P. Deschanel, *Gambetta* (Paris, 1919), and G. Hanotaux, *L'échec de la monarchie et la fondation de la république*, 2 vols. (Paris, 1926).

[2] The senatorial elections were held on January 30, 1876, the elections of deputies on February 20 and March 5, and on March 8 the Assembly—after more than five years of power—resigned its functions into the hands of the new parliament and passed out of existence. The elections are described in G. Hanotaux, *op. cit.*, III, Chaps. vi–vii, and the establishment of the new régime (although, of course, it is to be observed that MacMahon's presidency, the ministers, and the entire administrative and judicial system went on undisturbed) is covered in E. Lavisse, *Histoire de France contemporaine* (Paris, 1921), VIII, Chap i.

slowly, how painfully, how incoherently!" [1] The completed instrument bore on every page the marks of its tempestuous origin. In form, it cannot compare with the constitution of the United States, of Switzerland, of Eire (southern Ireland), or, for that matter, with any one of a half-dozen earlier constitutions of France herself. It consists of three separate, brief, poorly articulated documents. It shows little regard for orderly arrangement of material, and even the language employed is in spots decidedly below the French standard of grace and lucidity. More important, it makes no pretense to covering all of the matters which one expects to find treated in a constitution. It goes into rather needless detail at some points, and at others omits fundamentals. It contains no bill of rights, nor, indeed, any express guarantees of civil liberty. It does not say how the ministers shall be selected, or whether they shall be members of Parliament, or how the members of the Chamber of Deputies shall be chosen, or what their term shall be. It does not nowadays say how the senators shall be elected; for although this matter was covered in the first of the three laws as passed in 1875, the seven articles relating to it were stripped of their constitutional status and reduced to the character of ordinary statute by an amendment adopted in 1884.[2] There is no provision for annual budgets; and, aside from a clause authorizing the Senate to be erected into a high court, the judiciary goes entirely unmentioned.[3]

REASONS

What are the reasons for this nondescript, haphazard aspect of the fundamental law of a people famed for its orderliness, exactness, and love of the symmetrical and logical? Certainly they do not flow from any lack of experience in constitution-making. Nowhere else in Europe had so many written constitutions been drafted before 1875; and nowhere else had such instruments been so full, so explicit, and so letter-perfect. The shortcomings—in form and appearance at least—of the constitution of the Third Republic arose out of the give-and-take method by which it was made. From end to end, it was a product of compromise—the handiwork of a body of men who, taken as a whole, and because of the political situation already described, felt no enthusiasm for their labor and took no pride in its results. A monarchist majority found itself maneuvered, largely by its own ineptitude, into writing a republican constitution. But it neither wanted nor

[1] G. Hanotaux, *op cit.*, III, 283.

[2] Later in the same year, these articles were completely discarded and new legislation on the subject enacted. H. L. McBain and L. Rogers, *op cit.*, 541.

[3] The constitution is analyzed briefly in E. M. Sait, *Government and Politics of France* (Yonkers, 1920), Chap. 3, and more fully in G. Hanotaux, *op. cit.*, III, Chap. v.

expected that constitution to endure; and, viewing the instrument as a makeshift, it had nothing but apologies for it. As for the republicans, they rejoiced in the discomfiture of their opponents; but they had been obliged to make so many concessions that, at best, they could look upon the new frame of government, based as it was upon the ill-concealed hope of a resurrection of monarchy, as only something with which to start. "The constitution of 1875," says M. Barthélemy, "is a hang-dog constitution, 'Cinderella slipping noiselessly between the parties who despise her.'" [1]

WHY THE CONSTITUTION ENDURED

The French have a saying that "only the provisional endures." So it certainly has been with the country's constitutions. Half a dozen such instruments, meticulously drafted, cleverly phrased, and presumptively permanent, fell to the ground in swift succession. The hodge-podge fundamental law of 1875, grudgingly adopted and inspiring little confidence, struck root, proved adequate for the country's needs, emerged unscathed from the acid test of the World War and post-war crises, and is today as solidly grounded as any in Europe. One reason, of course, for the constitution's survival is that as time went on France gradually grew more frankly and positively republican, leaving the monarchists with no opportunity to write a new fundamental law more to their liking. A second favoring circumstance is that the constitution was the pet project of no one party. But a main explanation lies in the very qualities in the constitution which make it look so shabby in comparison with others—its brevity, its incompleteness, its lack of sonorous phrases and challenging principles. It did not seek to pull down a full-blown political system out of the heavens, but only to piece together a set of institutions that would serve immediate practical ends. That which already existed, *e.g.*, the president and the ministers, was to be continued, and to this were to be added only the most obvious necessities, chiefly a bicameral parliament to supersede the emergency assembly elected in 1871. Powers and relations were defined sparingly, and often in general terms, leaving the bulk of arrangements to be supplied, as need arose, by legislation, interpretation, and usage. Except in so far as the cabinet system envisaged was ultimately of English origin, everything was thoroughly French; at all events, there was no direct and deliberate borrowing, as from Britain in 1814 and from the United States in 1848. Practical rather than philosophical, matter of fact rather than doctrinaire, the constitution looked to no abrupt break with the past and affronted no feelings of national pride and

[1] *The Government of France*, 20.

spirit. Rather, it was hammered out, piece by piece, on the basis of hard experience, in the effort to meet the demand of an impatient country for a settled, workable system. It grew first, and only afterwards was put on paper. So constructed, it met the needs of the day, without losing capacity to be adapted and applied to meet those of other days that were different. If deficient in logic of content and arrangement, it was based, as a French authority has truly said, on "the larger logic of history."[1] So fortified, it has proved an instrument of great vitality and strength.

THE PROCESS OF CONSTITUTIONAL AMENDMENT

Without doubt, the final adoption of the three constitutional laws of 1875 was greatly facilitated by the provisions made for amendment. The authors of earlier constitutions flattered themselves that their handiwork approached perfection. But the makers of the present one labored under no such illusion. Every one expected to find himself wanting changes made; and every one, especially if a monarchist, was interested in setting up arrangements by which changes could be effected quickly and easily, yet without *coup d'état* or revolution. Accordingly, the Law on the Organization of the Public Powers lays down a very simple amending procedure: (1) the president (or the ministers acting in his name) may propose an amendment; or the proposal may come from one or both of the houses of Parliament; (2) each house considers the matter and decides, by a majority vote, whether in its judgment "a revision of the constitutional laws [in respect to a specified matter] is necessary"; (3) if both houses act affirmatively, the members meet in joint session as a National Assembly and, after such fresh discussion as may be desired, take final action, by absolute majority of the total membership.[2] Any proposal that successfully runs this gantlet forthwith becomes part of the constitution.

FEATURES OF THE PLAN

This mode of amendment presents a number of interesting features. In the first place, the same men who make the ordinary laws amend the constitution. After the preliminary stage, however, they are organized in a different way. When convened in National Assembly, the chambers lose their individuality for the time being, and senators and deputies become members, on a common footing, of a new, distinct, constituent body;[3] and whereas the regular work of legis-

[1] A. Esmein, *Éléments de droit constitutionnel* (8th ed.), II, 30.

[2] There being now 314 senators and 618 deputies, 467 votes in the National Assembly would at present be necessary for the adoption of an amendment.

[3] No special officers are elected for the direction of the Assembly's proceedings. The president, vice-presidents, and secretaries of the Senate serve as the "bureau."

lation is carried on by the chambers sitting in their respective buildings in the national capital, the Assembly meets in the hall occupied from 1876 to 1879 by the Chamber of Deputies in the old royal palace at Versailles. In the second place, the amending process is simple and speedy. It is, of course, not more so than in England, where, as we have seen, Parliament adopts constitutional changes in exactly the same way that it enacts ordinary laws. But, as compared with the method prevailing in the United States, where amendments to the federal constitution, after being proposed by Congress (or by a special convention), have to be ratified by the legislatures (or by conventions) in three-fourths of the states, it is conspicuously easy and speedy. The original constitution was not submitted to a popular vote, and neither are amendments. Either house can, of course, block a proposed amendment by refusing to vote the necessary preliminary resolution.[1] But, once this initial stage has been passed in the two chambers, the decision rests with a single body and is likely to be reached quickly. The plan has the merit of making it somewhat difficult to set the amending machinery going, but easy to obtain results after it is started.

RESTRICTION ON THE AMENDING POWER

So far as the letter of the constitution is concerned, only one restraint has been placed upon the Assembly's amending power, namely, that the republican form of government shall never be made the subject of a proposed revision. Even this prohibition (itself originating in an amendment of 1884) must, however, be regarded as a gentlemen's agreement rather than as an insurmountable restriction; for the National Assembly, once set up, becomes a sovereign body, equally with the Assembly which made the constitution in the first place, and as such cannot be regarded as bound by decisions of its predecessors. Any action of the Assembly would seem to be *ipso facto* valid and enforceable, even if directly contravening the clause cited, or—so far as that goes—even if it displaced the entire existing constitution by a new one.[2] In France, therefore, as in Great Britain,

[1] The constitution throughout evidences solicitude for the Senate, and the arrangement mentioned was designed to protect that body against amendments impairing its powers and rights at the hands of an amending assembly in which senators are, of course, heavily outnumbered by members of the other branch.

[2] There is not complete agreement among French authorities on this point. Duguit (*op. cit*, 2nd ed, IV, 538–540) takes the view here expressed, Esmein and Poincaré dissent. Thus Poincaré "The minister, Jules Ferry, who took the initiative of this measure, did not, of course, believe that a word inserted in a law could make the constitution eternal But he wished to put an end to the attacks, then incessantly renewed, of the enemies of the Republic. The practical bearing of this proposition is easily grasped. Any revision which would have for its object the substitution of a monarchical system for the Republic would be illegal and revolu-

the constitution is at the mercy of the government; for in both countries the people, although certainly to be regarded as the ultimate authority, have tacitly surrendered to the government—in effect, to the legislature—full constitution-making and amending powers It is true that in France a certain formal, procedural distinction between constituent and legislative activities is maintained; but in essence the situation is the same as that across the Channel, where no procedural differences exist.

AMENDMENTS THUS FAR ADOPTED

In point of fact, the amending power has been used sparingly. To begin with, the constitutional laws are so constructed and phrased as to leave very wide latitude for the exercise of governmental power within their broad and flexible provisions. In the second place, the courts do not pronounce acts of Parliament unconstitutional, thereby lending impetus to demand for constitutional amendment as has sometimes happened in the United States.[1] Great and necessary additions to, or other changes in, the governmental system have been made freely, not only by interpretation and usage but by legislation. Formal amendments, however, have been adopted on only three occasions: (1) in 1879, when an article in the law of February 25, 1875, was abrogated so as to enable the seat of government to be transferred from Versailles to Paris; (2) in 1884, when four amendments were sanctioned as follows: (a) reducing from three to two months the maximum interval between a dissolution of the Chamber of Deputies by the president of the Republic and the election of the new chamber, and requiring that the latter shall meet within 10 days after the election, (b) forbiding the republican form of government to be made the subject of a proposal for revision, and making members of families that have reigned in France ineligible to the presidency, (c) withdrawing its constitutional character from that part of the law of February 24, 1875, dealing with the election of senators, and leaving that matter to be regulated, as it is today, simply by statute, and (d) rescinding a paragraph of the law of July 16, 1875, which required that on the first Sunday after the opening

tionary. The head of the state would have the right, as it would be his duty, to refuse to promulgate such a law if voted." *How France Is Governed*, 163. Cf. E M Sait, *Government and Politics of France*, 28–29. There is similar difference of opinion on whether the Assembly, once convened, can legally consider and act upon amendments which have not been passed through the regular preliminary stages in the houses separately. Duguit (*op. cit.*, 2nd ed., IV, 541–542), says it may, Esmein (*op. cit.*, II, 547), that it may not. No effort of the kind has ever been made, but it would seem that, as a matter of law, Duguit's view is to be preferred

[1] Notably in connection with the Eleventh and Sixteenth Amendments

of a parliamentary session, divine aid in behalf of the chambers should be invoked in all churches and temples; and (3) in 1926, when, to bolster up confidence in the government's capacity to honor its financial obligations, a crisis "national union" ministry pressed upon reluctant chambers an amendment giving complete financial autonomy to an organization entrusted with amortizing the debt, and also earmarking specified revenues, *e.g.*, the proceeds of the tobacco monopoly, for debt payment. It is hardly necessary to add that these changes, taken together, do not make the governmental system anything very different from what it was when the constitution was first adopted.[1]

ORGANIC LAWS

But of course, in France as in other states, the real constitution is by no means simply the texts labelled as such; and by the same token, constitutional development is no mere matter of the amendment of documents. Around the three "constitutional laws" has been built up a vast structure of organic law, ordinary law, and custom. These are the things that put flesh on the skeleton, or, to abandon the figure, transform an outline into a system. Under French terminology, an "organic" law is one which, while enacted like any other, and not written into the formal

[1] Texts of the amendments of 1879 and 1884 are in L. Duguit et H. Monnier, *Les constitutions*, 336–338, F. M. Anderson, *Constitutions*, 639–640, and H. L. McBain and L. Rogers, *New Constitutions of Europe*, 528–529. Cf. J. Auffray, *Étude sur la faculté de la revision de notre constitution* (Paris, 1908), and H. Dupeyroux, "Du système français de révision constitutionnelle," *Rev. du Droit Public et de la Sci. Polit.*, July–Sept., 1931. The amendment of 1926 is discussed in A. Esmein, *op. cit* (8th ed.), II, 555–567. Several amendments were proposed during the World War, but none was adopted (see L. Duguit, *op. cit.*, Appendix). President Millerand, in 1924, strongly urged an amendment to increase the power of the chief executive—but also without avail. Amidst severe political disturbances in 1934, conviction that the parliamentary system was passing through a crisis which must somehow be resolved if democracy was to be saved called forth a flood of suggestions for governmental reform, some of them—touching such matters as the committee system in the chambers, the use of interpellation (see p. 528 below), and the enfranchisement of women—requiring no amendment of the constitution, but others entailing more or less important changes in that instrument. Among the latter, first place was taken by a proposal to repeal a clause of the Law on the Organization of the Public Powers which makes a dissolution of the Chamber of Deputies impossible without the consent of the Senate. Another looked to introduction of the device of the popular referendum. Notwithstanding that Premier Doumergue, and also a special committee of the Chamber of Deputies, urged especially the amendment relating to dissolutions, no action was agreed upon. But the proposals are by no means to be regarded as dead. See M. Ordinaire, *La révision de la constitution* (Paris, 1934), R. Mirkine-Guetzévitch, "Revision of the Constitution in France," *Politica*, Aug., 1934, P. Vaucher, "The Internal Crisis in France," *Polit. Quar.*, July–Sept., 1934, and cf. pp. 536–537 below. In *La reforme gouvernementale* (new ed., Paris, 1936), ex-Premier Léon Blum sets forth a program for making French governmental machinery more responsive to democratic control.

constitution, has none the less, because of the quasi-constitutional nature of the subject with which it deals, a more fundamental aspect than an ordinary statute. Electoral laws furnish as good an illustration as any. In reality, as Professor Munro remarks, there is not much difference between an organic law and an ordinary law except a sentimental one.[1] Both are enacted, and may be revised or repealed, in the same way. There is something to be said, however, for a terminology that puts a measure regulating the election of deputies in a different category from a statute laying duties on imports of wheat. The one type of law is obviously more basic, less open to change save for weighty reasons and after mature deliberation—in short, more analogous to constitutional law in the strictest sense—than is the other. Indeed, the equivalent of what is contained in most French organic laws is in many other countries found in the written constitution itself. But this merely illustrates how necessary it is in studying the actual working constitution of any state to take into account statutes as well as formal constitutional documents.

CUSTOM

Custom, or usage, too, is highly important. Great Britain has no monopoly of this sort of thing. It is true that the elements of the cabinet system, for example, are provided for in a fundamental law in France, whereas on the opposite side of the Channel they are not; but the actual workings of the system, including the high rôle played by the premier, are almost as much a matter of usage in one country as in the other. In 64 years, the Chamber of Deputies has been dissolved only once; and what stands in the way of further dissolutions is not simply the unusual constitutional requirement that the Senate must be consulted and give its assent, but a tradition or custom that would make a dissolution seem almost a *coup d'état*, and therefore revolutionary.[2] In the same length of time, only two presidents of the Republic have been reelected; and usage seems to have made a one-term rule almost as much a matter of unwritten law as a no-third-term rule has come to be in the United States. The president's right to demand reconsideration of a measure that has passed the two houses of Parliament —in other words, his suspensive veto—has never been exercised, and his right to send messages has fallen completely into disuse. It is by custom only that statutes are never made retroactive, that budgets are submitted annually, and that the person of the president is very rarely made a subject of parliamentary debate. Other illustrations will come to light as we proceed.

[1] *The Governments of Europe* (3rd ed.), 414.

[2] See p 450 below

BASIC FEATURES OF THE GOVERNMENTAL SYSTEM:

The next half-dozen chapters of this book will be devoted to an account of the system of government operating under the constitution of 1875 as expanded by amendment, legislation, and usage. Certain general features, however, may appropriately be noted here.

1. UNITY AND CENTRALIZATION

Since becoming a truly national state in early modern times, France has always had a highly unified and centralized political system; and there is no trace of federalism in her governmental arrangements today. To be sure, as one political régime has succeeded another since 1789, she has to some extent oscillated between extreme centralization, *e.g.*, under Napoleon I, and a greater measure of autonomy for local areas and governments; and conflict between the two principles runs throughout the history of the Third Republic, with, on the whole, a certain cautious tipping of the scale in the direction of a wider geographical distribution of powers. An outstanding feature of French government today continues, however, to be the high concentration of authority—legislative, judicial, and particularly administrative—at Paris. As in Great Britain, local governments have only such powers as are delegated to them by Parliament; and such delegation has been far less generous than on the other side of the Channel.

2. POPULAR SOVEREIGNTY

From limited government, the country after 1789 repeatedly slipped back into absolutism. Under the Third Republic, however, the principle of popular sovereignty has been maintained for more than 60 years, and in the face of communist and fascist dictatorships in other leading Continental states, the Republic remains a democracy. Manhood suffrage, cabinet responsibility, and parliamentary supremacy still give ample scope for the control of government by public opinion.

3. SEPARATION OF POWERS

The exponents of liberalism in the eighteenth century placed much stress on the separation of powers as a safeguard against autocratic government; Montesquieu, in particular, gave the doctrine vogue. The governments of the Revolutionary period were supposed to have been constructed with reference to the principle; and although ruthlessly defied under the Napoleonic régimes, it was in the minds of the makers of the fundamental laws of 1875, and as a constitutional maxim is jealously cherished by French lawyers and scholars today. In practice, the development of the cabinet system has tended

somewhat to reduce the principle to a theory rather than a fact; and the legislature's control over administration is appreciably greater than in England. On the other hand, the courts have less control over administration than in that country, because a different sort of provision is made for judicially reviewing administrative acts, and if the government as a whole be regarded as fundamentally one of union of powers, at all events, there is genuine and significant separation of functions.

4. THE SUPREMACY OF PARLIAMENT—JUDICIAL REVIEW

We have seen that the members of the national legislature, sitting in the guise of a National Assembly, and, as such, speaking for the ultimate sovereign, *i.e.*, the people, can make any changes whatsoever in the written fundamental law. To this may be joined the fact that, save for amending the constitution, the legislature *as such*, *i.e.*, Parliament, falls but little short of the legal omnipotence enjoyed by the Parliament of Great Britain, and may, if it chooses, enact a statute palpably inconsistent with the constitution in full assurance that such statute will be recognized and enforced by the courts—which is tantamount to saying that in France, as in Britain, the American practice of judicial review of statutes does not prevail. Slightly over a hundred years ago (1833), the Court of Cassation, as the nation's tribunal of last resort in cases of other than an administrative character, was faced with the question of whether it should declare null and void a press law palpably in violation of the constitutional charter of 1830. From one side, it was argued that if the plain provisions of the fundamental law could be ignored with impunity, it was useless to have a fundamental law at all. But to this the court replied that, however weighty the contention, the judges were without power to act, and that any law "deliberated and promulgated" according to the constitutional forms prescribed by the charter was "valid and enforceable", and the position thus taken has been adhered to, under all successive régimes, from that day to this. To be sure, as in Great Britain, subordinate legislation, *i.e.*, ordinances and regulations emanating from executive departments and other administrative officers and bodies, national or local, may be judicially reviewed to determine whether they are *ultra vires* or have been issued in any other way improperly; and not only may the ordinary courts refuse to apply such measures if found irregular or contrary to law, but the highest administrative court, the Council of State, may formally annul them. In neither France nor Great Britain, however, is any act of Parliament challengeable judicially.

A QUESTION FOR THE FUTURE

How long this will continue true is a matter of doubt; for in France judicial review, on something like American lines, has become a subject of lively discussion. Conservatives, in general, would like to see the courts in a position to curb an increasingly radical Chamber of Deputies, just as, with the same object in view, they would like to see a stronger executive. Some of the country's ablest constitutional lawyers not only believe the principle sound, but consider that the judges already have a potential right of review and need only to exercise it.[1] And the fact is noted that in a number of European states, *e.g.*, Norway, Switzerland, Rumania, Greece, and Eire (the former Irish Free State), full-orbed judicial review has of late come into play, while in pre-Nazi Germany and in the former states of Austria and Czechoslovakia there were important developments in the same direction. More radical political elements, on the other hand, raise strong objection on the ground that the power of review would frustrate popular control as exercised through the elected legislature, and would eventuate in a judicial autocracy. And able constitutional lawyers assert that, unless specifically authorized by constitutional amendment, it would violate the provision of Article 8 of the Law on the Organization of the Public Powers giving the *chambers* the exclusive right to determine whether any legislative proposal submitted to them contains within itself a modification of the constitution, and to proceed to an amendment if such modification is found to be involved, and if at the same time there is sufficiently strong desire to take the action proposed.[2]

In a sense, the whole issue is somewhat academic, for the reason that in a country with a constitution dealing mainly with the externals of governmental machinery and procedure rather than with substantive powers, having also no complicating federal arrangements, and, further, having no formal bill of rights or "due process" clause, comparatively little legislation is, or is likely to be, enacted concerning which there can be any genuine question of constitutionality. It is not inconceivable, however, that the Court of Cassation might reverse its stand of a hundred years ago; and at least one eminent French authority has left on

[1] L. Duguit, *Souveraineté et liberté* (Paris, 1922), 200.

[2] See argument of Carré de Malberg, reprinted in W. E. Rappard *et al.*, *Source Book*, Pt. II, 132–134. The point to the argument is that, as the constitution stands, the chambers are made the sole judge of what is constitutional and of what, on the other hand, falls outside of the constitution and accordingly could be undertaken only if the constitution were amended.

record a prediction that in the course of no great amount of time it will do so.[1]

5. THE STATUS OF PRIVATE RIGHTS

Unlike most earlier French constitutions, the fundamental laws of 1875 contain no bill of rights. There is a theory that the Declaration of Rights of 1789, having never been rescinded, is still in effect, and the view has had the support of some eminent authorities. Equally respectable authorities, however, are of the opposite opinion,[2] and the matter may be regarded as pretty well settled by the circumstance that one cannot go into court and establish a right by reference to the historic Declaration alone. As in Great Britain, certain monumental statutes cover a good part of the ground—the law of June 30, 1881, on freedom of public assembly, that of July 29, 1881, on liberty of the press, and that of July 1, 1901, guaranteeing the right to form associations not having objectives contrary to law or subversive of public morality. As in Great Britain also, however, the ultimate guarantee is the assurance that Parliament, although legally capable of imposing any restrictions whatsoever, is an organ of popular opinion and can be depended upon to recognize and respect personal freedom as an indispensable prerequisite of democratic government. More than once, it has been proposed that a formal bill of rights be added to the constitution. But not even the experiences of the World War period, when for more than five years a "state of siege" kept civil liberties virtually suspended, served to convince the nation of the necessity of such a precaution.[3]

[1] L. Duguit, as cited above. For a summary of the status of judicial review in Europe, see J. W. Garner, *Political Science and Government* (1932 ed.), 759–768, in France, the same author's "Judicial Control of Administrative and Legislative Acts in France," *Amer. Polit. Sci. Rev.*, Nov., 1915, and for a full treatment, comparing judicial review in the United States, A. Blondell, *La contrôle juridictionnel de la constitutionnalité des lois* (Paris, 1928).

[2] For the affirmative view, see L. Duguit, *Traité de droit constitutionnel* (3rd ed.), II, 182 ff., for the negative, E. Esmein, *Éléments de droit constitutionnel* (8th ed.), II, 587.

[3] On the general subject, see W. R. Sharp, *The Government of the French Republic* (New York, 1938), 29–37.

CHAPTER XXIII

The President of the Republic

IT WAS in America, rather than Europe, that the title and office of "president" first came into their present more or less axiomatic association with the idea of republican government. The United States has had a president since 1789, and various Latin American states from days dating back a hundred years and more. But the oldest presidency in Europe is that of Switzerland, beginning in 1848; and even *it* is only an incidental feature of a plan under which the national executive powers are vested, not in the president alone, but in a council of seven persons. The first French republic tried different forms of executive, but never had a president. The second republic, influenced somewhat by the American example, had a president—but only to see Louis Napoleon make the office a stepping-stone to an imperial title. This unhappy experience left the republican elements of the country in a somewhat skeptical frame of mind; and down to 1870 most of them felt—as, indeed, Jules Grévy had urged in 1848—that there ought to be no president of the Republic, but only a "president of the council of ministers" (in effect, a prime minister)—a head of the government not set up by popular election as an authority coordinate with Parliament, but chosen by Parliament itself and kept under the full control of that body. Reformers elsewhere in later times have occasionally held the same view; and in Prussia, Bavaria, and indeed all of the German *Lander* of pre-Nazi days one would have found in operation precisely the plan which numerous French republicans of 60 or 70 years ago had in mind. The National Assembly of 1871–75, however, came gradually to a different arrangement. Monarchist though it was, it created—or revived—the most obvious symbol that a republican government can have, *i.e.*, a chief executive known as "the president"; and, curiously, Grévy himself not only became the first Frenchman to be elected to the office under the constitution of 1875, but occupied it longer than did any other incumbent prior to the present one.[1]

REPUBLICS AND PRESIDENTS

[1] Speaking of the unimpressive start which the presidency of the Third Republic made, a French writer remarks. "No longer did he [Grévy] wish openly to abolish

HOW THE PRESIDENCY OF THE THIRD REPUBLIC AROSE

The architects of the constitution did not, of course, squarely and disinterestedly face the question of what form of executive to establish. Instead, they found themselves with a fully developed presidency on their hands, and merely voted to continue it. How this came about has already been related. The National Assembly, in 1871, was confronted with tasks which required the setting up of a "chief of the executive power," and it forthwith elevated to that dignity the man whom it rightly deemed to have the most outstanding qualifications, M. Thiers. There was no thought of a permanent presidential office—not even when, after a few months, the title of president was officially introduced. Nevertheless, precisely such an office was actually in the making; and the quarrels of the monarchists gave it every chance to grow. Already fully developed by 1875, the office did not have to be established, but merely to be assigned a place in the new constitutional order. There was therefore at that time little actual weighing either of French precedent or of foreign experience. The constitution of the first republic, like that of Switzerland, might have suggested a collegial, or plural, form of executive; that of the second republic might have pointed to a decision in favor of direct popular election. But little attention was paid to either. Nor is it clear that the country would have been any better off had a different course been pursued. Plural executives (Switzerland excepted) rarely work well; and direct popular election of a chief executive who is to function under the restrictions of a cabinet system—although fairly successful for a brief time in Germany under the Weimar constitution—might easily lead to difficulties, and in point of fact actually did so in France, as has been noted, in the period of the second republic.

THEORY AND FACT OF THE PRESIDENT'S POSITION

The office resulting from the casual procedure described is one of the curiosities of European politics. In many respects, the president of France is an imposing figure. He is the supreme embodiment of the executive power, the titular head of the state. The constitution endows him with numerous weighty functions. He receives a salary of 1,800,000 francs a year, with also the same amount for entertainment, travel, and miscellaneous expenses—both voted annually as part of the national budget.[1] The nation provides

it [the presidency], he occupied it and *effaced* it" J. Barthélemy, *The Government of France*, 89

[1] At the present rate of exchange, this means a total of about $83,000.

him with three splendid residences,[1] and he lives in semi-regal style. Wherever he goes, he is received with civil and military honors such as elsewhere are accorded only to royalty. He is, as a French scholar has said, "a constitutional king for seven years"—and for as much longer as his tenure may be extended by reëlection. In short, his position is as dignified, influential, and powerful as theories and forms can make it. But in "theories and forms" lies the rub. "Each of the acts of the president of the Republic," says the constitution, "must be countersigned by a minister"; and this merciless provision means that while power may be the president's, it can be exercised only through ministers, who, being responsible to Parliament, will naturally and rightfully insist on determining when and how it shall be wielded. We shall see that the president need not be a nonentity, nor yet a mere ornament. He may, indeed—just as may the king in England—exert influence, and even power. His main practical importance, however, is as a pageant rather than as a ruler—as a symbol of national unity, a nominal head of administration, a balance wheel in a complicated political machine. It goes without saying that some presidents have been less happy than others in such a rôle.

PRESIDENTIAL ELECTIONS

How does a president get his position, and what types of men are most likely to attain the honor? There are, of course, three well-known ways in which the chief executive of a republic may be chosen: by direct popular vote, by the legislature, and by some kind of electoral college especially constructed for the purpose. The German Republic of pre-Nazi days employed the first method; Switzerland employs the second; the United States (in theory, at all events) employs the third. France tried a modified form of the second plan in her first period of republicanism, and in 1848 went over to direct popular election. Neither experience was happy. In 1875, she, in effect, adopted the plan of legislative election; for although the National Assembly to which elections were entrusted is, in legal theory, a distinct authority, standing on its own constitutional foundation, it actually consists, on the Swiss analogy, of the members of the two houses of Parliament. The arrangement was a perfectly natural one, considering that the National Assembly which made the constitution had itself already elected two presidents, Thiers and MacMahon.[2]

[1] The palace of the Élysée (the imposing structure on the Champs-Élysées in which Napoleon signed his abdication after Waterloo) and the châteaux of Fontainebleau and Rambouillet.

[2] With a view to a somewhat broader electoral base, a leading scholar and parliamentarian, Joseph Barthélemy, has suggested that the electoral body be made

The formal procedure of a presidential election is laid down in detail in the constitution and a supplementary organic law; although, just as in the United States, there has grown up around the legal requirements a considerable amount of extra-legal usage. At least a month before his term is to expire, the president causes a meeting of the National Assembly to be held in the Palace of Versailles to choose his successor. If for any reason the president himself fails to act, up to a time when only two weeks of his term remain, the presiding officer of the Senate may take the initiative; and if the president dies or resigns, the Assembly meets in a day or two without formal summons at all. There is no vice-president, and no law of succession; so that whenever the presidency falls vacant there must be an election, and, at whatever time and under whatever circumstances chosen, a newly elected president is entitled to a full term of seven years. A vacancy may, of course, occur unexpectedly, entailing a hurried election. It did so in 1894, when Sadi-Carnot was assassinated, again in the very next year when Casimir-Périer resigned, and, most recently, in 1932, when Paul Doumer was shot by a Russian fanatic. Indeed, out of a total of 13 presidents since the establishment of the septennate, only six served a full term.[1]

CANDIDATES AND "BLOCS"

Except on rare occasions when the event has some symbolical significance, *e.g.*, Poincaré's victory in 1913 and Briand's defeat in 1931, a presidential election is likely to be a rather tame affair. Since the choice lies with a few hundred parliamentarians, and not with the nation at large, there is no occasion for a prolonged country-wide campaign such as we are familiar with in the United States. So far as the formalities in the National Assembly go, only a few hours are required. This does not imply, however, any lack of preliminary maneuvering. The *chansonniers* in the cabarets may make the presidency the butt of no end of witticisms because of the slender powers that go with it, but political leaders ardently seek it and parties and party *blocs* try hard to keep it out of the hands of their rivals. When therefore an election impends, there are plenty of signs of interest, at least in parliamentary circles. The number of parties is so large that no one of them can ever hope to elect a chief executive single-handedly. Consequently, it becomes a matter of building up combinations or *blocs*

to include not only the senators and deputies but also all members of the elective councils of departments and communes. See *La Revue des Vivants*, Apr., 1934, pp. 508 ff.

[1] See list on p. 444 below. During any interval between the death or resignation of a president and the election of his successor, full executive power is vested in the council of ministers.

pledged to the support of this or that candidate, passive or avowed. There is no formal nominating machinery. But days before the Assembly is to meet, *blocs* have been formed, candidates boomed, caucuses held, agreements reached; and the persons who are going to be voted for are, with rare exceptions, perfectly well known, not only to the supporting groups themselves, but to their rivals and to the country at large. Not only so, but as a rule the outcome can be predicted with a good deal of assurance. For usually the race narrows to two candidates, whose respective strength is a matter of figures that anyone familiar with the situation can compile.[1] The candidates themselves must remain in the background. They may have laid the foundations of success by cultivating friendships, subscribing to worthy causes, and in other ways keeping themselves in favor with Parliament and the public. They may even make a few speeches. But—in theory at all events, if not always in actual fact—the presidency, like kingship in England, is outside the realm of politics; and its seekers must confine their talk to appeals to patriotism, laudation of civic services and achievements, and similarly colorless and innocuous remarks—especially such as will indicate readiness, if elected, to respect all parties and show favor to none. Open and direct electioneering would be resented by the members of the Assembly and disapproved by public opinion.

PROCEDURE IN THE NATIONAL ASSEMBLY

The business of an electoral body is to vote, not to debate; and the National Assembly, when choosing a president, neither hears speeches naming and extolling the candidates nor engages in discussion. "When the Assembly is convoked for a presidential election," once wrote a statesman who participated in such an event a number of times and on one occasion was himself a successful candidate, "the members vote without discussion. The urn is then placed on the tribune [the platform from which speakers would address the body if there were debate], and as an usher with a silver chain calls their names in a sonorous voice the members of the Assembly pass in a file in order to deposit their ballot-papers. . . . The procession of voters lasts a long time [about two hours]; there are nearly nine hundred votes to be cast.[2] When the vote is completed, the scrutators [*i.e.*, tellers] drawn by lot from among the members of the Assembly, count the votes in an adjoining hall. If no candidate

[1] Occasionally, however, two candidates have so nearly equal support that the scale may be tipped in one direction or the other by a handful of unpredictable votes. So it was in the exciting election of 1931, when Paul Doumer triumphed over Aristide Briand

[2] The number is now (1939) 932.

has obtained an absolute majority of votes, the president [1] announces a second ballot, and so on, if needful, until there is some result.[2] The candidate elected is proclaimed by the president of the Assembly. There are applause and cries of *Vive la République!* and the Assembly dissolves. The new president, accompanied by the ministers, reënters Paris and installs himself in the Palais de l'Élysée." [3] The inauguration takes place immediately if the election has been called to fill a vacancy already existing; otherwise, on the day on which the former president's term expires. The incoming executive is escorted to the Élysée by the prime minister and a regiment of *cuirassiers;* the retiring president makes a formal speech and his successor a reply; and afterwards the two go together to the Hôtel de Ville, where they are received by representatives of the municipality and of the department of the Seine. The people line the streets and cheer; but the formal ceremony is attended only by the ministers and by committees (including the presidents) of the two chambers.

QUALIFICATIONS AND REËLIGIBILITY

The constitution of the United States lays down certain qualifications for the president, and the earlier republican constitutions of France also contained important provisions of the kind. Curiously, the constitution of the Third Republic, as originally adopted, was mute on the subject. Apparently the framers assumed that the National Assembly would never elect anyone who was not a French citizen. 21 years of age or over. and in possession of full civil and political rights, and were willing to let it go at that. As indicated above, an amendmend of 1884 debars members of all families—Bourbon, Orleanist, and Bonapartist—that have ever reigned in France. But this remains the only formal restriction; there is not even anything (except the fact that women have not yet entered French political life) to prevent a woman from being elected.

On one point, however, the French constitution is more specific than the American, namely, as to the president's reeligibility. It is not left to be inferred that a president may be reëlected; it is so stipulated. And he may be reëlected any number of times, for consecutive

[1] The president of the Senate occupies the chair, even when, as sometimes happens, he is one of the candidates to be voted on.

[2] So commonly has a *bloc* been built up in advance with sufficient votes to ensure the choice of its candidate that a second ballot has been necessary in only four instances (1886, 1895, 1913, and 1931), while a third has never yet been required Scattering complimentary votes are usually given a number of men who are not avowed candidates.

[3] R. Poincaré, *How France Is Governed,* 168–169 For an interesting account of the election of 1931, see P. Lyautey, "The French Presidential Election," *Nineteenth Century,* June, 1931 (reprinted in N. L. Hill and H. W. Stoke, *op. cit.,* 225–260).

terms or otherwise. The clause of the constitution of 1848 which made the president reëligible only after an interval of four years had much to do with producing the *coup d'état* of 1852, and the plan has never been revived. The relatively long term nowadays sets up, however, a certain presumption against even a single reelection. Only two presidents, Grévy and Lebrun, have been elected a second time; and chagrin caused by the misdeeds of a son-in-law led Grévy to resign (1887) before his second term was far advanced.[1] Indeed, a single-term tradition seems almost as securely entrenched in France as is the no-third-term tradition in the United States—and this despite the reëlection of President Lebrun in 1939, which would hardly have occurred, and likely would not even have been suggested, but for an unusually tense international situation in which the reelection of the chief of state was deemed a desirable gesture by way of emphasizing the solidarity of French national sentiment.

TYPES OF MEN WHO ATTAIN THE PRESIDENCY

In his *American Commonwealth*, the late Lord Bryce devoted a chapter to explaining "why great men are not chosen president." Less than a chapter would be required to answer the same question for France. No one, as we have seen, can go far as a presidential candidate in that country without enlisting the support of two or three, or more, different parties or parliamentary groups. To do this, however, one must not be too pronounced in his views, too fully on record, or too self-assertive. It is desirable, indeed practically necessary, to have had political experience; in point of fact, every president after MacMahon had a previous parliamentary career, and indeed was a member of Parliament when elected; and all have served—in some cases repeatedly—either as minister or as presiding officer in one or both of the branches of Parliament. But party and parliamentary leaders of the first rank are seldom chosen. They have made too many enemies. They are too prominently identified with programs and "causes." Their habit of leadership and dominance might render them dangerous, or at any rate troublesome. There have been some strong presidents. Casimir-Perier was one; Poincaré was another; Millerand was a third. But for the most part the Gambettas, the Ferrys, the Waldeck-Rousseaus, the Clemenceaus, and the Briands have been passed over in favor of amiable and "safe" mediocrities like Faure, Loubet, Fallières, and Doumer, whose earlier careers fitted them to be compromise candidates, and who,

[1] President Doumergue refused, in 1931, to be a candidate for a second term, on the constitutional ground that the president is supposed to be an arbitrator between parties and could not fulfill this function if he were to seek their support for reëlection

accepting the office for what it was, supplied dignity, impartiality, and cooperation without laying claim to any particular brilliance or other distinction.[1] The French presidency is, indeed, no office for a strong man. Such a man expects to have power. But under the French form of political organization, power is, and must be, assigned elsewhere, *i.e.*, to the ministers. As an American writer suggests, the French must therefore not expect to find "a succession of Bona-

[1] If presidents were elected directly by the people, some of the "strong men" would probably have gained the office. Thus in 1920 Clemenceau would almost certainly have been the choice, rather than the gentle Deschanel, preferred by the parliamentarians. The "Tiger" is known to have complained bitterly of Parliament's ingratitude Perhaps he forgot having boasted that in earlier presidential elections he had himself "voted for the most stupid candidate." On one occasion (1913), the parliamentarians were moved to elect a strong man (Poincaré) president in order to get rid of him as an uncomfortably obstinate premier.

The complete list of presidents is as follows

1. *Thiers*, 1871–73. Parliamentarian, patriot, diplomat. Resigned because of differences with the National Assembly.
2. *MacMahon*, 1873–79 Soldier and monarchist Resigned rather than dismiss army officers accused of Bonapartist leanings.
3. *Grévy*, 1879–87. Bourgeois lawyer and ardent republican Only president prior to Lebrun to be reelected. Resigned because of scandals involving a member of his family.
4. *Sadi-Carnot*, 1887–94 Engineer and "dark horse" presidential candidate. Assassinated
5. *Casimir-Périer*, 1894–95. Masterful personality and experienced statesman. Sensitive to criticism and impatient with weakness of his position. Resigned after only a few months in office.
6. *Faure*, 1895–99 Bourgeois shipowner. A mild and cautious man in a difficult situation Died in office.
7. *Loubet*, 1899–1906. Bourgeois and self-effacing
8. *Fallières*, 1906–13. Like predecessor.
9. *Poincaré*, 1913–20. Able lawyer and vigorous personality. Many times minister. France's "war president."
10. *Deschanel*, 1920. Fifteen times elected president of the Chamber of Deputies Attained the presidency after long seeking it, only to be compelled by a mental breakdown to resign within a few months
11. *Millerand*, 1920–24 Began public career as a socialist. As president, ardently advocated increase of his powers. Overreached himself, and compelled by parliamentary deadlock to resign
12. *Doumergue*, 1924–31. Went from presidency of the Senate to presidency of the Republic As unassertive and self-effacing as could be desired, nevertheless was recalled from retirement to take the helm as premier during the political crisis of February, 1934
13. *Doumer*, 1931–32 An Auvergnat of peasant stock At various times engraver, professor, editor, and banker A seventy-four-year-old senator and ex-minister when elected president over M. Briand. Died in office from effect of an assassin's bullet
14. *Lebrun*, 1932——. In Parliament almost continuously after 1900. Vice-president of the Senate when chosen president of the Republic. Reelected in 1939

For characterizations of the French presidents by French writers, see A. Guérard, "In the Realm of King Log," *Scribner's Mag.*, Feb., 1925, and E. A. Vizetelly, *Republican France Her Presidents, Statesmen, and Policy* (London, 1924)

partes, Bismarcks, Lincolns, and Gladstones in that high office." [1] In point of fact, there is probably more worrying about the quality of French presidents outside of France than inside. The average, one may suspect, is quite as high as in the United States.

PRESIDENTIAL POWERS THEORY AND FACT

Upon turning to the powers and functions of the president, the uninitiated might well be struck with amazement. In a book by the monarchist Duc de Broglie, he would read that the president is "a chief invested with all the attributes of royalty: initiative, veto, and execution of the laws; direction of the administration in all of its branches; appointment of all employees of the government; command of the forces on land and sea—a royal chief, without the royal name and the royal permanence." [2] On the other hand, he would read in a volume by Sir Henry Maine: "There is no living functionary who occupies a more pitiable position than a French president. The old kings of France reigned and governed. The constitutional king, according to M. Thiers, reigns, but does not govern. The president of the United States governs, but he does not reign. It has been reserved for the president of the French Republic neither to reign nor yet to govern." [3] The explanation, of course, is that the former writer was thinking simply of the position in which the constitution, in certain of its clauses, seems to place the president, while the latter had in mind the cold actualities of the situation. Anyone who has studied the government of England will at once be reminded of classic passages in writers like Bagehot relating to the status and powers of the king.[4] Fundamentally, the situation is the same on the two sides of the Channel. The titular head of the state is endowed in form with all of the weighty authority that would seem to go with such a position. But in both cases, practically the whole range of powers may be exercised only on the advice of responsible ministers —which in practice means by the ministers themselves. In other words, France, like Britain, has a parliamentary form of government. True, she has a president. But this is only because, after much wavering, she has settled down as a republic rather than a monarchy. She no more has a presidential form of government, as opposed to the parliamentary form, than has Britain herself. Analogies for what

[1] W. B. Munro, *The Governments of Europe* (2nd ed.), 408.

[2] *Vues sur le gouvernement de la France* (2nd ed., Paris, 1872), 227. It is, of course, only fair to recognize that this flattering characterization dated from a period in which the presidency was still considered a responsible office and not the irresponsible sort of one which it became under MacMahon

[3] *Popular Government* (London, 1885), 250.

[4] See p. 41 above

one finds at Paris therefore lie almost entirely in the direction of London rather than that of Washington.

At first glance, it seems absurd to talk, as writers do, about the powers of the president, and then confess that they are really not his powers at all, but rather the ministers'. One cannot very well, however, get away from such procedure, because not only in the letter of the constitution, but in the eye of the law, the powers in question *are* the president's. The situation is precisely as in Britain, where the executive (and various other) powers historically belong to the king, even though they have long since come to be exercised only through ministers who are responsible to Parliament, and are euphemistically described as powers of the "crown." In law, the French president is endowed with many and weighty powers, even though in this case the exercise of them by the ministers is a matter of formal documentary provision, and not simply of usage as it is on the other side of the Channel.

EXECUTIVE POWERS:

What are the most important of these powers, and under what conditions are they wielded? As might be expected, they divide into two main groups—executive and legislative. Naturally, also, the former is the more important, since legislation is chiefly the business of a different, though not entirely separate, agency, *i.e.*, Parliament. First of all, the president, as chief executive, promulgates the laws and sees to their enforcement, at all events, every new law is proclaimed and every enforcing act performed in his name. In the next place, all national civil officials (not only at Paris, but throughout the country), and all army and navy officers, are appointed also in the president's name. Higher officials are nominated to the president by the ministers and appointed by presidential decree; inferior ones are designated by the ministers without such formality. Formality it is; because although the president may suggest appropriate appointments and advise against those which he deems inappropriate, he must acquiesce in his ministers' decisions. Indeed, he is lucky if he always knows in advance what the ministers intend to do. As a rule, new offices are created by act of Parliament, but some have owed their origin, rather, to presidential decree. Only since the World War has Parliament established its exclusive right to create even such important offices as new ministerial posts. In all instances, Parliament, however, may fix the qualifications to be required of appointees; and it may go as far as it likes in vesting the actual choice of

1. PROMULGATION AND EXECUTION OF THE LAWS

2 APPOINTMENTS AND REMOVALS

officials in authorities other than the president—although in practice this commonly means the ministers, who in substance have it anyway. With slight exceptions, removals are made in the same manner as appointments, and in neither case is confirmation or other action by Parliament required.[1]

3. CONDUCT OF FOREIGN RELATIONS

The management of foreign relations is, of course, an executive function, and on paper the president has full power in this field. Foreign ambassadors are accredited to him; French ambassadors, ministers, and envoys are appointed and instructed, and treaties are negotiated, in his name. In general, the relations between president and ministers are, however, the same in this domain as in others. It is primarily the Foreign Office that picks the men for posts abroad, prepares their instructions, negotiates treaties, and, with deference to parliamentary opinion, formulates foreign policy and carries it out. Certainly the president has no such rôle as that played by the chief executive of the United States, who—whether or not, like President Wilson, "his own secretary of state"—definitely directs the foreign relations of his country. French presidents, like British kings, have often, nevertheless, been rather influential in foreign affairs. They represent the principle of continuity in a field in which that principle is especially important; in this field, too, they are not so much hampered by the obligation of neutrality toward the political parties as in others. Grévy took a delicate negotiation with Germany out of the hands of the foreign minister and conducted it himself; Loubet had to be reminded publicly that it is the ministers, not the president, who bear responsibility for the management of external relations; while Poincaré, whose presidency (1913–20) covered the period of the World War, took an active, and sometimes a controlling, part in determining not only military, but also foreign, policy.[2]

TREATIES

Presidential influence may extend to treaties, which in any event are negotiated in the chief executive's name and personally signed by him. Treaties of peace and commerce, treaties which affect the finances of the state, and

[1] On the president's actual power and responsibility in selecting prime ministers, see pp. 460–462 below.

[2] It is significant, however, that the spokesman of France at the Versailles Peace Conference was, not President Poincaré, but Premier Clemenceau, whose views and policies were often very different from those of the president, and who, in fact, was most cordially disliked by the latter. See L. Rogers, "The French President and Foreign Affairs," *Polit. Sci. Quar.*, Dec, 1925, pp. 546–553, also R. Poincaré, *Les origines de la guerre* (Paris, 1921), S Huddleston, *Poincaré; A Biographical Portrait* (Boston, 1924), and H. Ferras, *Le rôle du président de la république dans la direction de la politique extérieure* (Paris, 1935).

those which involve the personal status and property rights of French persons abroad require approval by the two chambers (not simply the Senate, as in the United States); and, with or without a treaty, no cession, exchange, or addition of territory can be made without parliamentary sanction. Extradition treaties, military conventions, treaties of alliance, and political treaties of all kinds are exempt from parliamentary control—so long as they do not require appropriations from the national treasury—and several treaties of these sorts have been withheld from Parliament in recent years.[1] Such agreements, however, can no longer be kept secret, because, France being a member of the League of Nations, her treaties must be reported promptly to the League secretariat at Geneva for registration.[2]

4 COMMAND OF ARMY AND NAVY

What of war powers? So far as declaring war is concerned, only the two chambers can act, in other words, the situation is as in the United States and wholly different from that in Great Britain, where not only making peace but also declaring war is a prerogative exclusively of the crown. It is hardly necessary to add, however, that in conducting foreign relations the ministers may, like any authority handling international matters (the president of the United States included), bring about a situation making war inevitable. Whether in war or peace, the president is commander-in-chief of the armed forces of the nation, military and naval. Actually, of course, command lies with generals and admirals acting under the ministries of war and marine, and subject to supreme direction of the cabinet.

5. PARDON AND REPRIEVE

Finally, the chief executive has full power of pardon and reprieve in cases involving offenses against the national laws. Amnesties, however, can be granted only by action of the chambers.

LEGISLATIVE POWERS:

1. CONTROL OVER PARLIAMENTARY SESSIONS

Turning to the legislative side, we find, first of all, the power to convoke the Senate and Chamber of Deputies in annual and extraordinary sessions, to adjourn both bodies not to exceed a month at a time (or twice in a session), and to prorogue them when their work is finished, although not until after they have been in session as much as five months. These are, of course, mainly formalities, as is indicated by the constitutional provision that the chambers shall

[1] For example, the Franco-Belgian military convention of 1920 and a Franco-Czechoslovak treaty of 1924.

[2] Useful documents on the conduct of foreign relations will be found in W. E. Rappard *et al.*, *Source Book*, Pt II, 135–156

meet every year in January whether convened by the president or not. If one were to accept the constitution's assertions concerning the president at face value, it would appear that he may also initiate legislation; and the American reader would not fail to note that the right to transmit messages to the chambers is expressly conferred. There is indubitably a large place in the system for the originating of bills by the executive, just as there is in the British system. But, with rare exceptions, it is the ministers who propose such measures, not the president. They have seats in Parliament as do the ministers at London, and they lead in parliamentary business in much the same way, although, as we shall see, they dominate the scene by no means so completely. As for the president, he does not even send messages; there would be no point to doing so, considering that the ministers would have to write them, or at all events be willing to stand sponsor for everything said in them.

2. INITIATION OF MEASURES

Every measure, in order to become law, must be proclaimed by the president, who indicates his approval by personally signing the decree of promulgation. Instead of proclaiming a measure, he may within a thirty-day period, send it back to the chambers to be reconsidered. If, however, they pass it again—and simple majorities suffice—it must be promulgated forthwith. On paper, this suspensive veto looks to be of some importance. In practice, it is not so; indeed, it has never once been exercised. The reasons are fundamentally the same as those which long ago caused the veto power to fall into disuse in England. A veto could be imposed only on advice of the ministers. But if a measure to which they objected should reach the point where a veto would be applicable, it would mean that they had been unable to stem the tide of opposition in the chambers; and in that case they would have ceased to be ministers.[1] All bills duly passed by Parliament are therefore promulgated, regardless of what the president thinks of them—the resulting acts being published in the daily *Journal Officiel* for the information of all concerned.

3. VETO

There are a good many evidences in the constitution that the implications of the cabinet system were not very clearly understood in France in 1875. One of them is the veto provision just cited. Another is the power given the president to dissolve the Chamber of Deputies only with the consent

4. DISSOLUTION

[1] It may be noted, however, that during the parliamentary debates on electoral reform late in 1923 President Millerand threatened to interpose a veto if a bill re-establishing single-member districts were passed. See p. 454 below.

of the Senate. Dissolution of the lower branch of parliament by the titular head of the state on advice of the ministers is, of course, a familiar feature of parliamentary government everywhere. But in France alone is it required that before a dissolution shall take place the assent of the second chamber shall be asked and obtained. The result is that dissolution in that country has had a very restricted history. Indeed, it has been resorted to only once, and then under circumstances so discreditable as to invest the device with a disrepute not even yet dispelled. At the behest of a monarchist group, President MacMahon, in 1877, forced the resignation of a ministry that had the Chamber's confidence, and then, acting on the advice of a new monarchist premier (the monarchist-controlled Senate concurring), dissolved the existing Chamber in the hope that the country would elect a new one favorable to discarding the republic. Instead, what happened was that the electorate returned a substantial republican majority; and in the end the president was himself compelled to surrender office. From this "Seize Mai crisis" to the present day, no Chamber has ever been dissolved. A ministry which loses support at the Palais Bourbon simply resigns; it never thinks—as an English ministry so situated commonly does—of appealing to the country. As will be emphasized in another place, this makes cabinet government in France something different indeed from what it is on the other side of the Channel.[1]

5. ORDINANCES

But if the veto and dissolution powers are thus atrophied, there is another power (legally of the president, even though exercised by others in his name) which is wielded with great vigor and effect. This is the power of issuing ordinances. Like all legislative bodies, the French Parliament finds it impossible to lay down full and detailed regulations on all matters with which it deals. This is not only because of shortage of time, but frequently because of lack of requisite knowledge and skill. Indeed, the chambers sometimes find it impracticable to legislate at all upon a subject which nevertheless calls for action. When the Third Republic arose, there was already a strong tradition in France and other Latin countries in favor of "administrative legislation," *i.e.*, the issuance of regulations by the chief of state (or in his name) completing and supplementing acts of the legislature. And while the fundamental laws of 1875 did not confer ordinance-making powers upon the president in so many words, they bestowed it in effect by granting him unrestricted authority to "supervise and assure the exe-

[1] See p. 469 below. As pointed out above p 431), conviction that the power of dissolution should be made really effective came to a head in 1934 in a widely supported constitutional amendment repealing the requirement of senatorial assent—but without action finally being taken.

cution" of the laws.[1] Moreover, in later days Parliament has repeatedly authorized such power to be exercised, not only in amplifying statutes particularly specified, but even (especially at times of national emergency) in issuing regulations ("decree-laws") on subjects not yet dealt with by law at all.[2] Indeed, practically all important statutes emerging from the chambers carry clauses providing that "an ordinance of public administration shall determine the measures proper for securing the execution of the present law." The broad principles are laid down in the statute, and perhaps standards of action set; details are left to be supplied by supplementary *décrets*, or ordinances. Scores of such *décrets* are issued every year—in the name, as has been said, of the president, and under his signature, though actually by the council of ministers, or even by an individual minister. Naturally, ordinance-making was carried to unprecedented lengths during the period of the World War. But the billboards of Paris, or any other of the nation's cities, mutely testify to the place which ordinances fill in French life at any and all times. Of course it must not be supposed that this device of ordinance-making is peculiar to France. It has its place in all governments; and, as we have seen, its steady growth in English-speaking countries, including the United States, is one of the most challenging and significant developments of our time.[3]

Even when issued by virtue of delegated legislative power, ordinances are not *law*, as the French use the term, save only in the case of "decree-laws" of the nature indicated above. Unlike acts of Parliament, their validity (with the exception mentioned) may be questioned in both the ordinary and the administrative courts. Indeed, an ordinary court may, in a particular case, refuse to apply an ordinance which it considers to be in conflict with a provision of law; and the Council of State, as the highest administrative court, may, on the same ground, annul an ordinance outright. On this account, it is customary for the ordinance-making authorities to consult the Council on form and content before actually issuing a decree. In England also, the courts do not hesitate to pass upon the validity of subordinate, administrative legislation; and in this respect —though no further—there is judicial review in both countries.[4]

[1] Law on the Organization of the Public Powers, Art. 3.

[2] Indeed, whole codes of regulations are sometimes issued without any express legislative authorization at all, *e.g.*, a highway code in 1922.

[3] When issued by subordinate members of the administrative hierarchy, regulations are known as *arrêtés;* and these do not require presidential signature.

[4] See pp. 37, 115 above. The general subject of *décrets* in France is treated in A. Esmein, *op. cit.* (8th ed.), 76–116. An extensive series of significant administrative reforms in 1926 furnishes excellent illustration of *décrets* of major importance. See *Rev. du Droit Public et de la Sci. Polit.*, Apr.–June, 1927.

THE PRESIDENT'S RESPONSIBILITY

A matter that gave the makers of the constitution a good deal of concern was the president's "responsibility." Down to 1875, it was commonly assumed that in a republic having a cabinet form of government the president, as well as the ministers, must be explicitly made responsible to the legislature. The constitution of 1848 declared the president responsible, along with the ministers and all other persons entrusted with public powers, and de Tocqueville, de Broglie, and other authorities stoutly urged that presidential responsibility is an indispensable feature of republicanism. Experience in the years 1871–75 showed, however, the difficulty—indeed, the impossibility—of attaching general and political responsibility to a president with a fixed term, even when elected by the legislature. In any case, it proved impracticable to maintain presidential responsibility and ministerial responsibility side by side; if responsibility was to mean anything, it must be undivided. Consequently, political responsibility of the president was gradually given up, and when the constitution of 1875 was framed, the essential object—which was, of course, to bring the acts and policies of the executive under the ultimate control of the legislature—was attained instead by specifying, first, that every act of the president should be countersigned by a minister, and second, that the ministers should be collectively responsible to the chambers for the general policy of the government and individually answerable for their personal acts.[1]

There was no intention, however, of giving the elected titular head of the state any such immunity as is enjoyed by monarchs, even by the British king. Hence the constitution further prescribes that the president shall be answerable on charges of high treason, and that he may be impeached by the Chamber of Deputies and tried by the Senate. In other words, his responsibility is not political (*i e*, not for the *policies* of the government), but penal. His person and his dignity are protected by statute against insult; and, like the president of the United States, he is exempt during his term of office from the processes of the ordinary courts. But, also like his American compeer, he may be brought to trial on articles of impeachment. The president of the United States can be impeached for "treason, bribery, or other high crimes and misdemeanors";[2] the French president can be impeached for high treason only. On the other hand, whereas the penalty that can be imposed upon an American president is confined to removal from, and disqualification to hold, office, no limit is

[1] Law of February 25, 1875, Arts 3, 6.
[2] *Constitution*, Art II, Sec. 4.

fixed in the case of a French president. No president of France, however, has ever been impeached.[1]

USES OF THE PRESIDENCY

In view of all that has been said about the president's position, the question arises, Why have a president at all? Socialist and other radical politicians have sometimes ventured the opinion that there really is no adequate reason. There is, nevertheless, justification for the office; and it is much the same that we have already noted in connection with the survival of kingship in England. The president personifies the unity of the nation and of the empire (France, too, has her "backward peoples" to be impressed); "permanently tall-hatted," he relieves the ministers of a considerable burden of social and ceremonial obligations; he has opportunity to render good service as an impartial, non-political counsellor; and he performs certain necessary acts, *e.g.*, selecting the prime minister, which can most readily be provided for in this way. In short, he is the titular head which cabinet government almost universally seems to require. His position, of course, is by no means the same as that of the British king. In some respects it is stronger, and in others weaker. He indeed lives in a palace and bears himself with something of the grand manner of a monarch. Nevertheless, he is only an elected official, a functionary serving for a term of years, and will presumably fall back again into the ranks of ordinary citizens. Not even during his brief stay at the Élysée is he, like the British king, the head of society. People respect his office. But there is no halo of royalty around his head, and the king has the decided advantage of a more truly unique station, the age-long traditions connected with his title and functions, his life tenure and longer accumulation of political knowledge and experience, and his more complete detachment from the hurly-burly of political life. On the other hand, the French president, unlike the king, has had an active rôle in politics and statecraft before he reached his high position; as president, he has closer day-to-day contact with the affairs of government; he sits with the ministry, and indeed presides over it (with the right to give opinions but not to vote) at its frequent meetings for the consideration of foreign policy, military defense, and larger administrative matters, although not at less formal sessions at which minor matters, along with questions of political policy, including party affairs, are taken up;[2] and because of the number and shifting combinations of parties, he has more discretion—and more difficulty—in choosing prime ministers.

[1] A. Esmein, *op cit* (8th ed), 220–229

[2] See pp 465–466 below.

THE PRESIDENT'S VARYING RÔLE

It goes without saying that the influence which the president actually wields depends greatly upon his own capacity and temperament, his interests, the esteem in which he is held by the ministers, his personal conception of his office, and the extent to which he chooses to assert himself. President Fallières was content to leave the business of state to others and contributed little on his own account; President Poincaré, a man of unusual force and ability, played an active rôle and supplied impressive leadership of the nation in its supreme time of trial during the World War. Occasionally, indeed, a president so far asserts himself as to make trouble for Parliament and his ministers. The most notable instance was Millerand, who in 1922 drove M. Briand from the premiership, who developed a strong line of personal policy and harangued the country in behalf of it in virtual defiance of the cabinet, who threatened to veto an electoral bill and to resign rather than promulgate it if passed, and who at the parliamentary election of 1924 urged the people to continue the moderate *bloc* in power, and thereby so offended the victorious Radical-Socialist forces that when the Herriot cabinet took office its members joined in what was to all intents and purposes a "ministers' strike" and refused to let the work of government go on until he had bowed in submission and resigned. This, however, was a most unusual, as it certainly was a regrettable, chapter in presidential history.[1]

THE QUESTION OF ADDING TO HIS POWERS

The experience just mentioned lent fresh interest to a question which for some time had attracted a good deal of attention, *i.e.*, that of giving the chief executive a greater amount of actual power. Needless to say, Millerand was on the affirmative side of this issue; and many people, especially conservatives, thought, and still think, that the presidency ought to be strengthened—not only because men of caliber can hardly be expected to seek or accept an office in which they will be expected merely "to hunt rabbits and not to govern," but also for the reason that a stronger presidency might be made a useful counterpoise to a Chamber of Deputies grow-

[1] The fact that Millerand was compelled to resign—precisely as a prime minister might be—by votes of want of confidence passed in both Chamber and Senate indicates that the idea of the president as being, after all, responsible to the chambers in a political sense has not wholly died out. But how otherwise could a chief executive who had so clearly overstepped his constitutional bounds be got rid of? Impeachment was not feasible, because, however grave M. Millerand's offense, nobody could very well allege that it constituted "high treason." On Millerand's view of the presidency when he took office in 1920, see T. Barclay, "Monsieur Millerand and his Programme," *Nineteenth Cent.*, Nov., 1920. Cf. W. L. Middleton, *The French Political System* (London, 1932), 199–203.

ing steadily more radical. A weighty obstacle was, however, that no one could figure out a way of giving the president larger power without withdrawing power in corresponding degree from the ministers, and ultimately from Parliament as well. Real power for the president must mean the right to direct and control the ministers, as the American president directs and controls his heads of departments. This, of course, would make them responsible to him. But how could they be responsible both to the president and to Parliament? The prime requisite of parliamentary government is supreme control of national affairs by parliament itself; and such control necessarily includes power to hold the ministers to account for everything that the executive does. They cannot serve two masters; a government cannot be half parliamentary, half presidential. The proposals made were therefore tantamount to asking that the pages of history be turned back to the first years of President Thiers—that both the form and spirit of the French government, as arduously developed through a half-century, be discarded for something different.

INCREASED EXECUTIVE POWER LIKELY TO FALL CHIEFLY TO THE MINISTERS

The chances that anything like this will be done seem remote. A constitutional amendment would presumably be required, and it is fair to suppose that neither senators nor deputies, however devoted in a general way to the principle of separation of powers, would relish any change tending to erect the titular chief executive into a rival authority. Furthermore, political elements on the left, considering the popularly elected legislature their strongest and surest instrumentality, can be depended upon to raise objection, very much as, and for the same reason that, they oppose judicial review.[1] Practical experience in connection with Millerand's activities, also, has dampened enthusiasm for a more powerful chief executive; as likewise did, at an earlier time, the spectacle of President Wilson's memorable fight with the American Senate over ratification of the Versailles treaty.

To be sure, France, in common with most of the world, has, in recent decades, witnessed growing impatience with legislative bodies. An anti-parliamentary movement has gained headway;[2] although none was adopted, constitutional amendments urged in 1934 looked generally toward a stronger executive; fascism has won many adherents and at times has seemed to threaten democracy itself. The

[1] From radical sources, the proposal used to be heard that the presidency be abolished altogether. Of late, however, the idea seems to have been dropped.

[2] See pp. 536–537 below.

probability is, however, that any changes that may be made in the direction of strengthening the executive arm of the government will alter the position not so much of the president as of the ministers. Even the most-discussed change of all, *i e.*, elimination of the Senate's check upon the power of dissolution, would, in practice, redound to the advantage of the council of ministers primarily; for, unless the cabinet system itself were to be discarded, it would have to be the ministers, rather than the occupant of the Élysée, who would decide upon dissolutions and, in all but name, decree them.[1]

[1] On the French presidency in general, see the works of Esmein and Duguit already cited. The matter of presidential powers is treated at length in G de Lubersac, *Les pouvoirs constitutionnels du président de la république* (Paris, 1913), and a lucid, if not altogether convincing, argument for an increase of powers will be found in H. Leyret, *Le président de la république* (Paris, 1914). Other useful references include J. Bryce, *Modern Democracies* (New York, 1921), I, 225–231, R. H. Soltau, "The Present Position of the French President," *Economica*, May, 1921, J W. Garner, "The Presidency of the French Republic," *N Amer. Rev*, Mar, 1913, and especially E M. Sait, *op. cit.*, Chap. ii, W. L. Middleton, *op. cit*, Chap. ix, and H. Finer, *op. cit.*, II, 1128–1144.

CHAPTER XXIV

National Administration

I. THE MINISTERS AND THEIR DEPARTMENTS

IF ONE were asked to characterize the government of France with telegraphic brevity, he could hardly do better than reply: Highly centralized administrative control exercised through executive departments presided over by ministers responsible to a parliament elected by the people. He might go on to explain that of the two main principles involved, one, *i.e.*, administrative centralization, is a heritage from the Napoleonic régime and the other, *i.e.*, ministerial responsibility, an importation from England. Still further, he might say that the French administrative system is not only the most imposing, but also probably the most influential, in the world, even though the French people themselves find in it a good deal to criticize and arm-loads of books have been written to show wherein it might be improved. In an age belatedly learning the true importance of administration as a branch or phase of government, France has much to offer.

A MAJOR FRENCH CONTRIBUTION TO GOVERNMENT

At the outset, one finds, as would be expected, that the entire national administrative system heads up nominally in the president of the Republic, but actually in the ministers. The president, to be sure, has considerably more to do with administration than does the king in England. He has a good deal of actual discretion in selecting the prime minister; by custom, he presides over and may take active part in meetings of the *conseil de ministres*, in which major matters of national policy are discussed and *décrets* on multifold subjects decided upon; and he exercises as much personal surveillance as he likes over the conduct of public business by the officials, high and low, of the departments. Nevertheless, as in other countries in which the cabinet system prevails, the work of administration—carried on by the civil service—is supervised and directed by the officials who alone are answerable to Parliament for it, *i.e.*, the ministers.

THE MINISTERS AS THE CHIEF ADMINISTRATIVE AUTHORITIES

CONSTITUTIONAL BASIS OF THE MINISTRY

This being the case, one might expect a good deal to be said in the national constitution about these officials, and perhaps about the departments over which they preside. Earlier French constitutions did indeed contain numerous provisions on the subject, that of 1795 going so far as to stipulate that the ministries should number not fewer than six nor more than eight. The fundamental law of today is, however, conspicuously silent on the subject. True, the little that it says is significant, chiefly, (1) that "every act of the president shall be countersigned by a minister"; (2) that "the ministers shall be collectively responsible to the houses for the general policy of the government, and individually for their personal acts", and (3) that "the ministers shall have entrance to both houses, and shall be heard when they request it." [1] In the first two of these passages, remarks Professor Munro, "in thirty-three words, is an attempt to set down the essential principles of cabinet responsibility as they have slowly evolved in England during a period of several hundred years." [2] Authority for the existence of a council of ministers, or cabinet, must, however, be deduced merely from the provision for collective responsibility; the constitution makes no direct allusion to such a body. On matters of lesser moment, the fundamental law is equally silent. It does not say how many ministries, or departments, there shall be; it does not specify what posts shall be deemed of ministerial rank; it makes no provision for establishing departments or abolishing them. These omissions, to be sure, are not to be deplored, the matters mentioned hardly belong in a fundamental law. Nevertheless, the way has been left open for a great amount of controversy concerning the creation of departments and definition of their functions.

ESTABLISHMENT OF NEW MINISTRIES, OR DEPARTMENTS

For upwards of fifty years, the method was simply that of executive decree; whenever the ministry felt that an additional department was needed, it procured an order creating one, and Parliament had nothing to do with the matter beyond making such appropriations as were entailed.[3] In the United States, executive departments are established only by act of Congress, and in Great Britain nowadays (although by no means in all cases formerly), by act of Parliament. In France, long-standing complaint of abuses arising from arbitrary juggling of departmental organization and

[1] Law of Feb. 25, 1875, Arts 3, 6, Law of Feb. 24, 1875, Art 6

[2] *The Governments of Europe* (3rd ed.), 439 Similar provisions are found in most written constitutions of Continental Europe.

[3] The only exception was the creation of the colonial ministry by statute in 1894

functions, reenforced by dissatisfaction with the way in which wartime governments added to and otherwise modified administrative services at will, led Parliament in 1920 to pass an act stipulating that thenceforth no new ministries or under-secretaryships should be created, nor any functions transferred from one ministry to another, except by statute. On many occasions subsequently, however, the law has been evaded; at all events, Parliament still repeatedly finds itself "establishing" new ministries only in the sense of making financial provision for departments already called into being by executive order.[1] As illustrated by the hectic experience of the United States with administrative reorganization in the period since 1932, there is in all governments a tendency to conflict between the desire of the executive to determine the machinery through which it shall function and that of the legislature to keep such machinery under its own control.

THE EXISTING MINISTRIES

Starting at nine in 1875, the number of ministries reached 12 by 1914, and—except during the early stages of the World War, when it rose to 21—it has in later years varied from 13 to 18; almost every year, in fact, has witnessed a change of some sort. The 18 now (1939) in existence are: (1) Foreign Affairs; (2) Interior; (3) Justice; (4) Finance, (5) Budget; (6) War; (7) Marine, (8) Air; (9) Public Instruction and Fine Arts; (10) Posts and Telegraphs; (11) Public Works; (12) Public Health; (13) Commerce; (14) Merchant Marine; (15) Agriculture; (16) Labor; (17) Colonies, and (18) Pensions.[2] In the main, the functions of each are indicated by its title. The Ministry of the Interior, however, which an American might presume to be similar to the department of the same name in his own country, is really quite a different affair, being concerned, not with public lands and reclamation and education, but with correlating and supervising the work of local government and administration throughout the Republic. No department wields greater power—both in administration and on political lines (by virtue of the influence of the prefects on elections)—and it is not strange that on many occasions the prime minister has selected the Interior portfolio for himself. Legally coordinate, as are the 10 executive departments in the United States, the ministries differ considerably in prestige, toward the top being those of Interior, Foreign Affairs, Justice, and Finance, and nearer the bottom those of Commerce, Labor, and Public Health. Organized so as to include, in one or another of

[1] Thus the air ministry, created in 1928, was in operation two months before receiving retroactive statutory sanction.

[2] [When war with Germany began in 1939, a Ministry of Armaments was added.]

their number, substantially all of the regular national administrative services, they differ sharply from the American departments; because in the United States, as is well known, many important services are carried on by commissions and other "independent establishments," *e.g.*, the Interstate Commerce Commission and the Federal Trade Commission, standing entirely outside of the 10 departments.[1] The number of ministers, it should further be observed, is not always the same as the number of departments. In order to build a ministry supported by a substantial majority, "ministers without portfolio" are sometimes appointed (the first Blum ministry, in 1936–37, for example, contained three such); and occasionally—indeed, rather frequently of late—the premier departs from custom and takes charge of no department, as in the case of Viviani in the early stages of the World War, Poincaré in 1928, Doumergue in 1934, and three others who held office between 1934 and 1937. Conversely, a single minister sometimes temporarily holds two portfolios simultaneously.[2]

HOW A NEW MINISTRY IS MADE UP

1. THE PREMIER

The constitution does not say in so many words how ministers shall be appointed, but this is because they clearly come within the scope of the president's power to "appoint to all civil and military positions." In form, the procedure is the same as in Great Britain: the titular head of the state names a political leader to be prime minister,[3] the latter draws up a list of persons for the various posts and submits it to his chief; the list is accepted (almost invariably as presented) and published; and thereupon the new ministers are sworn in and enter upon their duties. Actually, however, the process differs considerably in the two countries. In Britain, as we have seen, the king normally has no discretion in the matter, when a ministry resigns, its chief indicates to the sovereign the man who, as recognized opposition leader, is entitled to be invited to form a new government, and the invitation is extended as

[1] Had these detached agencies been incorporated generally in the departments, as was recommended by President Roosevelt's *committee on reorganization in 1937*, American practice would have been brought more into line with the French. In neither country do departments always have jurisdiction over all matters germane to their respective functions, in France, for example, Public Works yields control of highways to the Interior and of fortifications to War and Marine. The Chamber of Accounts (*Cour des Comptes*), which audits the accounts of the spending departments, is a case of an independent establishment in France.

[2] Various aspects of the scheme of ministries are brought out effectively in an article by J. Boucheron reprinted in part in W. Rappard *et al.*, *Source Book*, Pt. II, 84–90.

[3] Technically, in France, "president of the council of ministers." The term "premier" (French equivalent of "prime minister") is, however, in common use.

a matter of course.[1] In France, where parties are not only numerous but continually forming and re-forming and grouping themselves in ever-shifting *blocs*, and where no party is ever strong enough to command a majority in the Chamber of Deputies and make up a ministry single-handedly, there may easily be no outstanding leader with a preeminent right to recognition, but rather a half-dozen or more leaders having almost equal claim. In this situation, the president will naturally have considerable freedom of selection. If he is wise, he will not, of course, decide arbitrarily. Rather, he will advise with persons best informed on the political situation—the presiding officers of the Senate and Chamber of Deputies, committee chairmen, and other party leaders—and, in the light of the information received, make up his mind as to what he should do. The problem may resolve itself rather easily. But again it may not. It is of no use to name a man who cannot build a *combinaison ministérielle* that will command parliamentary support. The leader first invited may refuse. Another may accept, only to find that he cannot make headway. Not infrequently, the post is tendered to three, four, even half a dozen, men in succession before the right one is discovered. Needless to say, during the week or more sometimes required to straighten out such a situation, the president rises to a position of supreme importance in the government and bears a heavy load of responsibility. Furthermore, such occasions come frequently. During President Doumergue's seven years at the Élysée (1924–31), 16 new ministries were set up and abortive attempts were made to form five others. Still more extraordinary, the "government of national union" organized under the premiership of ex-President Doumergue in February, 1934, was the eighth ministry that the country had known since the defeat of Pierre Laval's first one scarcely more than two years previously.

2. THE OTHER MINISTERS

Having consented to try his hand at forming a ministry, a presumptive premier sets to work to select his colleagues and assign them to the various posts. A British leader, similarly situated, has difficulty enough, even though in ordinary times he has only to choose among the men of standing in his own party. A French cabinet-builder will commonly find the going hard indeed. Not only must he deal with persons of differing and often incompatible temperaments, but he

[1] As explained elsewhere (p. 71 above), the rise of the Labor party has upset the traditional bi-party balance and might conceivably put the king in a position to exercise some choice as between two opposition party leaders having about equal claim. But so long as the Liberal party has no greater following than now in the House of Commons, there will be no chance of this occurring.

must distribute places and pledge himself to policies in such a manner as to secure the cooperation of usually as many as three or four different, ambitious, and jealous parties or groups. Perhaps he can complete the task in a few hours; but as a rule days are required to reveal whether he can accomplish it at all.[1] If he fails, he will not be premier. Throughout the period of his efforts, the Parisian newspapers tell in rapidly succeeding editions of his hurried visits to the homes of prominent politicians, of his interviews, pourparlers, overtures, and solicitations, with daily summaries of his triumphs and disappointments. If in the end he succeeds, he goes with his list to the president of the Republic, who again comes into the picture long enough to approve it.[2] If he fails, someone else is invited to make the attempt, and the process starts all over again. Even after the president has acted and the list has been sent to the *Journal Officiel* for publication, some group may change its mind and by withdrawing upset the combination. Still further, everything will be undone if the new government, upon appearing in the chambers, and presenting its "ministerial declaration," or program, is overwhelmed in the ensuing debate and denied a vote of confidence.[3] In such a case, the ministry's life will be snuffed out almost before it begins—unless by some quick legerdemain the harassed premier manages to save the situation. Sometimes before a ministry finally wins parliamentary approval, a leader who at first had failed tries again and has better luck.[4]

[1] It has been computed that the average length of ministerial "crises" is five days But they have been known to last as long as 19 days

[2] In rare instances, he may refuse to endorse a nomination which he particularly dislikes. Clemenceau could never get into a ministry as long as Loubet was president. On the other hand, President Poincaré in 1914 felt obliged to put the stamp of approval on Caillaux, whom he strongly distrusted. Millerand, in 1920, gave a new turn to the situation when, passing from the premiership to the presidency, he required of his successor, Leygues, that all department heads be continued at their posts It may be added that nearly all ministries are so made up as to include some members of the preceding one

[3] The premier reads the declaration in the Chamber, the Minister of Justice in the Senate. For a specimen—although unusually specific—declaration, see W. E. Rappard *et al*, *Source Book*, Pt. II, 47–50.

[4] Ministers are commonly, although not invariably, selected from among members of Parliament, chiefly the Chamber of Deputies. Formerly, the portfolios of war and marine were usually filled with high officers of the army and navy who were innocent of parliamentary experience, and as recently as 1936 Premier Blum's "Popular Front" ministry contained three non-members. With only occasional exceptions, however, the same practice prevails as in Great Britain, and for identical reasons Even if not a member, a minister has a right to attend sittings of both houses in order to make statements, answer questions, and take part in debate—which, of course, is not true across the Channel. The proportion of ministers belonging to the Senate tends to decrease, and in most recent governments has not exceeded one-fourth. There is never any lack of *ministrables*, i e, deputies (and occasional senators

HOW DOES A MINISTRY WORK?

Such are the hazardous circumstances under which a new ministry in France is put together. How does it work while in office? More specifically, what relations exist between the premier and the colleagues whom he has chosen? How do they function in their collective capacity? What is a minister's position in his own department, and over what sort of departmental organization does he find himself presiding?

THE PREMIER AND HIS COLLEAGUES

Viewed from afar, the relations between the premier and the other ministers are much the same as in England. The chief minister has put his associates where they are; he has only to make a formal request of the president of the Republic to secure the removal of any or all of them; and while legally he is on a common footing with the others, he can assert as vigorous leadership as he likes (or deems expedient) and compel any minister to stand by him or resign. This, at all events, is the situation on paper, precisely as it is in England. In practice, some important differences appear. A French ministry is, as a rule, far more difficult to lead than is an English one. Instead of being a fairly homogeneous group of men belonging to a single party (that is what an English ministry *normally* is), it, as we have seen, is a loose-knit combination representing, as a rule, one party predominantly but also one or more other parties, pieced together with difficulty and permeated with opinions and ambitions often next to impossible to reconcile. Precariously situated at best, its life will be brief indeed unless matters are handled adroitly. Possessed of full disciplinary power, the prime minister rarely dares exercise it—certainly not in any arbitrary or autocratic manner. Instead of commanding, threatening, and compelling, he must, for the most part, argue and persuade—and often surrender. Otherwise, his house of cards will topple to the ground. Obviously, much will depend upon the premier's personal qualities and those of his associates, as well as upon the general political situation at a given moment. But it is a rare prime minister at Paris who holds the whip-hand in any such fashion as does a British cabinet head. Ex-President Poincaré, as premier in 1926–29, is one of the few that can be cited; while keeping

and even outsiders) who aspire to become ministers and have some, even though perhaps slender, claim to consideration. Once a minister, even though for but a day, a politician has the pleasure of hearing himself referred to for the rest of his life as *ancien ministre*. On the personnel of French ministries from 1871 to 1930, see note by J. G. Heinberg in *Amer. Polit. Sci. Rev.*, May, 1931, pp. 389–396, reprinted in part in N. L. Hill and H. W. Stoke, *op. cit.*, 269–274; and cf. note by the same author in *ibid.*, Apr., 1939, pp. 267–279.

well within his constitutional powers, he in fact ruled France with almost a dictatorial hand.

In times past, the French premier commonly added to his power and prestige by assuming the headship of one of the great executive departments. Prior to the World War, the portfolio usually preferred was that of the Interior, carrying with it a wide sweep of authority not only over much of the national administrative machinery, but over local government and the conduct of elections as well. During the War, the post assumed was likely to be that of War or Foreign Affairs, and in the succeeding decade and a half it was most frequently the latter—reflecting the high importance of international relations in the period. More recently, however, premiers have been successfully resisting the temptation to burden themselves with departmental responsibilities, no fewer than four out of seven who held office between 1934 and 1937 took charge of no department. Purchase of a suitable building and fitting up of a dignified headquarters establishment, together with provision for a more adequate secretariat, have tended appreciably to exalt the office, at least in prestige; and it may be that most future incumbents will consider it the part of wisdom to place all of the departments in other hands.[1]

M. POINCARÉ ON A MINISTER'S DAILY DUTIES

Some impression of what it means to be a minister may be gained from the following account by the highly experienced M. Poincaré. "The conscientious minister has his day well filled. In the morning, when he enters his study, he finds a formidable mass of correspondence on his desk. The correspondence which is not addressed to him privately is, of course, opened and examined by employees, but a large number of letters remain which he is compelled to read through. Most of these come from senators or deputies, who have acquired the annoying habit of recommending candidates for every species of post. Shortly before nine o'clock, the minister gets into his coupé or motor-car, the coachman or chauffeur of which wears a tricolor cockade. He is driven to the Élysée if there is a council of ministers, or to the ministry over which the president of the council presides if there is to be a cabinet council. The Council sits till midday. On days when it does not sit, the minister receives officials or members of Parliament. There is an

[1] The premier receives the same salary as all of the other ministers, *i e*, 120,000 francs a year ($2,800 at the present rate of exchange), plus 25,000 francs for maintenance of an official automobile. For a vivid account of the premier at work, see "Monsieur le Premier," *Les Annales Politiques et Litteraires*, May 25, 1924, reprinted in N L. Hill and H. W Stoke, *op cit*, 266–269

interminable procession of people soliciting favors. After lunch, the minister goes to the Chamber or the Senate. When he returns, he finds all the desks and tables in his office loaded with great portfolios, crammed with every kind of document. There are letters or proposed decrees prepared by the different services of his department and awaiting the ministerial signature. If he does not choose to sign them blindly, he must spend long hours looking into the different affairs. He then receives the chief officials of the ministry, who come to discuss the more delicate matters of current business. To acquit himself decently of a task so heavy and so varied, it is not enough to possess method; lacking a great aptitude for work and a rare promptness of judgment, he will be merely the plaything of Parliament or the tool of his departmental bureaux." [1]

THE MINISTER'S DUAL RÔLE

This flash of the spot-light upon a minister's daily routine serves excellently to suggest the two-fold rôle that he is called upon to play. On the one hand, as a member of the ministerial group, he shares in the collective work of the council of ministers and of the cabinet. On the other, as an individual administrator, he directs the affairs of the department over which he has been placed in charge. We are concerned at this point chiefly with the administrative system, and therefore with the minister in his second capacity, and with the services, central and exterior, over which he presides. Before going on with this matter, however, something must be said of the heads of departments from the viewpoint of their group responsibilities and activities.

THE COUNCIL OF MINISTERS AND THE CABINET COUNCIL

In the passage quoted above, M. Poincaré speaks of the ministers as being whisked from their desks, now to a meeting of the council of ministers, and again to a sitting of the cabinet council; and he indicates that in the one case their destination is the Élysée and in the other the office of the premier. The difference between the two gatherings is significant.[2] The council of ministers meets, as a rule, twice a week, with the president of the Republic presumably in the chair (though even French constitutional lawyers differ on the point), and much business pertaining to appointments, *décrets*, and general policy—particularly as related to foreign affairs and national defense—is transacted. Only in this way can most important decisions of the government be validated and given effect.

[1] *How France Is Governed*, 198–199.

[2] Quite a bit more so than is indicated by the remark of a former minister that the cabinet council is a place where you may smoke and the council of ministers a place where you may not smoke!

The cabinet council, on the other hand, is a gathering of the ministers only, with the premier in the chair. It convenes once a week or oftener, and while it cannot issue decrees or perform other executive acts, it considers most of the questions which eventuate in such acts, and, in particular, discusses and decides upon legislative policies, parliamentary tactics, and other matters having to do with the ministry's efforts to keep itself in power.[1] In other words, the council of ministers, although having to do also with policy, is primarily an executive body, like the king-in-council in Great Britain, while the cabinet council is to a greater extent a policy-framing political body, *i.e.*, much as the *cabinet* also is on the other side of the Channel. It goes without saying that since France is governed according to the principles of the cabinet system—a system working very differently, to be sure, on the Seine and on the Thames, yet the same in its underlying concepts and objectives—it is the ministers as cabinet officers, rather than as members of the ministerial council, that chiefly require our attention.

SOME FEATURES OF THE CABINET.

1. RESPONSIBILITY

The salient feature of cabinet government is, of course, the responsibility of the ministers to an elective parliament, and the French fundamental laws of 1875 explicitly provide for such responsibility in the following language: "The ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts." [2] Elsewhere, the fundamental laws make ministers liable to impeachment by the Chamber of Deputies, and to "trial by the Senate for crimes committed in the performance of their duties"; [3] and ministers have occasionally been impeached, removed from office, and banished or otherwise punished for offenses which they had personally committed.[4] The responsibility envisaged in the clause quoted is, however, not penal but political, *i.e*, the sort of responsibility that arises from the unwritten but clearly implied rule that ministers may remain in office only so long as their management of

[1] Meetings of both bodies are strictly private. Actions taken in the ministerial council are commonly reported to the press, and in any event usually result in duly promulgated decrees. On the contrary, cabinet proceedings, as in Great Britain, commonly become known only as information leaks out A rudimentary secretariat, established by administrative order in 1922 and given a legislative basis three years later, was abolished in 1926 as a measure of economy. A new and somewhat more elaborate one made its appearance a few years later, although even yet no complete records of meetings of either the council of ministers or the cabinet council are kept.

[2] Law of February 25, 1875, Art. 6.

[3] Law of July 16, 1875, Art. 12.

[4] Sometimes, too, proceedings are brought against them after they have left office.

affairs meets with parliamentary endorsement. The rule is, in general, the same as that which operates in the British system, upon which, indeed, it originally was patterned. One highly important difference, however, appears. In Britain, as in cabinet-government countries generally, ministers are responsible to the lower house of Parliament alone. But in France, according to the constitutional phraseology above quoted, they are responsible to both houses. It is true that some French constitutional lawyers take the view that the architects of the constitution did not really expect, or even intend, that the ministers should be responsible to the Senate. They say that the phrase "responsible to the *chambers*" was current also in the reign of Louis Philippe, when, however, ministers were actually responsible only to the lower house; and that neither in the debates in the National Assembly of 1871–75 nor in the political literature of the time is there indication of any intention to give the phrase a different meaning.[1] This, however, seems a somewhat forced interpretation, based on negative evidence, and suggested mainly by the fact that in practice ministerial responsibility has worked out in the Third Republic to a considerable degree as in the Orleanist monarchy and in cabinet governments elsewhere. It is rather a bold assumption to say that the National Assembly wrote "chambers" but meant "chamber"; and there are first-rate French authorities who hold that the ministers are, and were meant to be, responsible to the Senate and Chamber of Deputies equally and in precisely the same manner, both bodies being (contrary to the case in Orleanist France and in Great Britain) elected, either directly or indirectly, by the people.

ACTUAL RÔLE OF THE SENATE

The question of what was intended is now somewhat academic. The matter of main importance is how the system actually works; and as to this, happily, the facts are fairly clear. Without shadow of doubt, the Senate can address inquiries and interpellations to the ministers, introduce amendments to government (including money) bills or reject them outright, appoint commissions of inquiry, and adopt votes of censure or "no confidence," precisely as does the Chamber of Deputies. It has done all of these things many times. Furthermore, on half a dozen occasions it has directly forced a ministry from office. In 1896, it passed, five times within three months, a vote of want of confidence in the Bourgeois ministry, and at last practically compelled it to resign by refusing an appropriation until there should be "a constitutional ministry possessing the confidence of the two

[1] Cf. A. Esmein, *Éléments de droit constitutionel* (8th ed.), II, 266.

chambers." In 1913, by rejecting a proportional-representation measure sponsored by a Briand ministry and endorsed by the Chamber of Deputies, it caused the ministry to resign. In 1925, a strong and pugnacious Herriot ministry, and in 1930 an equally vigorous Tardieu ministry, was upset from the same quarter, in both cases by express vote of censure. A Laval ministry came to grief in a similar way in 1932; and, most recently, the "Popular Front" ministry of the Socialist Léon Blum fell in 1937 because the Senate persisted in blocking the premier's demand for "full powers" to deal with a critical condition of the nation's finances—a grant which pressure from the country caused promptly to be made to the succeeding Chautemps ministry.[1] Still further, more than one premier, *e.g.*, Poincaré in 1923 and Daladier in 1933, has gone before a refractory Senate telling it that unless it acquiesced in the government's program on a given matter, he and his colleagues would throw upon it the onus of upsetting a cabinet busily engaged in safeguarding and promoting the nation's interests. After all is said, however, these occurrences, while somewhat numerous, have been distinctly exceptional. Manifestly, cabinet government would break down if ministries were actually required to be equally answerable at all times to two separate bodies which are elected at different dates and in different ways and dominated much of the time by different party groups; and in practice the situation is saved for France by general acquiescence (including that of the Senate itself) in the principle that *normally* a ministry shall remain in office so long as it enjoys the confidence of the lower house. Accordingly, although obliged to give more heed to opinion in the upper chamber than is necessary in Great Britain, ministers commonly stand in much the same relation to the more democratic branch as in that country.

2. LACK OF SOLIDARITY

A point at which more actual difference appears is in respect to the cabinet's unity or solidarity. In Great Britain, the cabinet—and for that matter the ministry as a whole—is composed normally of persons belonging to a single party and presumed to be in substantial agreement on all important matters of principle and policy. The presumption is often belied by the facts. Nevertheless, a ministry—even when a coalition—tries to conceal any internal differences that may exist, and thus to put up a united front in Parliament and before the country. In France, such solidarity—even in appearance—is usually impossible. In the first place, as has been observed, all ministries are

[1] L. Rogers, "M Blum and the French Senate," *Polit. Sci Quar.*, Sept., 1937.

necessarily coalitions. They may be ministries of the Right or of the Left, or of Right-Center or Left-Center. But in any event they contain men drawn from a number of different parties or groups. Precariously built into a cabinet, these men differ in many of their principles and are actuated by various more or less opportunistic motives. Even if they were personally minded to hang firmly together, the groups behind them are full of dissentients who make dependable support impossible, and indeed may shift position or even dissolve completely almost over-night. The average French cabinet, therefore, has about as much stability as the proverbial house of cards. Premier Combes put it mildly when he admitted to the Chamber a generation ago that the cabinet does "not pretend to realize an absolute homogeneity." Solidarity is lacking also in that, whereas in Great Britain, responsibility has now for a good while been regarded as definitely collective, French practice, backed up by express constitutional provision, recognizes it as both collective and individual. In the one country, a ministry stands or falls as a unit; in the other, it is no uncommon thing for an individual minister, under fire in the Chamber or Senate, to be thrown to the wolves by his colleagues. It is going rather far to say, with Professor Finer, that political practice has "virtually deleted the words 'collectively responsible' from the constitution." [1] But there can be no question that the accountability of a French cabinet member to Parliament is of a more personal, or individual, nature than anything known under the British system.

3. SHORT TENURE

The divergent sources from which they are drawn and the fickleness of their parliamentary support would of themselves explain why French cabinets rarely last long. There are, however, additional reasons. One of them is the fact, already noted, that even when a cabinet commands adequate support in the Chamber of Deputies, it may come to grief through opposition in the Senate. Another is the circumstance that, although entitled to ask the president to dissolve a hostile Chamber of Deputies in order to clear the way for the election of a new and perhaps more friendly one, a French cabinet never thinks of doing such a thing. In the first place, under the French constitution no such dissolution is permissible without the consent of the Senate, which sets up a restriction totally unknown to cabinet government elsewhere. In the second place, on the one occasion when a dissolution actually occurred, *i.e*, in 1877, the device was brought into lasting disrepute by being employed in a boldly conceived effort to upset the republic

[1] *The Theory and Practice of Modern Government*, II. 1050.

in favor of a restoration of monarchy.[1] Cabinet government without dissolutions is a most unusual thing. Nevertheless, that is exactly what France has. And of course it means that when an important government bill is defeated or a policy blocked or a vote of no confidence passed at the Palais Bourbon—as will usually be the case before a multi-party cabinet has long been in office—there is nothing for the ministers to do but resign. The Chamber of Deputies invariably lasts out substantially its full legal term of four years; when conflict develops, it is always the ministers who give way.[2]

4. ELEMENTS OF CONTINUITY

The upshot is a kaleidoscopic succession of ministerial "crises" which is the despair of those who are called upon to chronicle them and the provocation of no end of uncharitable remarks from even well-informed students of government who, like the somewhat censorious Bodley, rush to the conclusion that because the French cabinet system does not work like the English, it is no cabinet system at all; Bodley, indeed, did not hesitate to characterize the resulting situation as "anarchy." Between 1870 and 1934—a period of 64 years—France had a total of 88 ministries, with an average life of less than nine months.[3] Of the 88, only 18 lasted as long as one year, and none longer than two years, eleven months, and eleven days.[4] During the same period, Great Britain had 18 ministries, lasting an average of almost three and one-half years. From the close of the World War to midsummer of 1933 (a period of less than 15 years), Great Britain had seven ministries, Germany 15, France 23. The natural inference would be that government in France is little more than a succession of starts and stops, of rapid, sudden, and bewildering shifts of policy, with no end of confusion and waste. It would, indeed, be so but for

[1] President MacMahon, himself a monarchist, arbitrarily dismissed the republican premier, Jules Simon, named the monarchist Duc de Broglie as his successor, and, finding the Chamber of Deputies hostile, obtained the consent of the monarchist Senate to a dissolution. The new Chamber, however, proved strongly republican, and the formation of a republican cabinet by Dufaure brought the *Seize Mai* crisis to an end. See G. Hanotaux, *Contemporary France*, III, Chap. IX, and IV, Chap I

[2] As indicated in a previous chapter (see p. 431, note 1, above), a political crisis of 1934 lent much force to a demand for a constitutional amendment repealing the requirement of senatorial consent to dissolutions No action, however, has been taken, and meanwhile there are not only no dissolutions but also no requests upon the Senate for its consent to such.

[3] Different writers reckon the number somewhat variously, according to whether certain ministries of only a few hours' duration are regarded as merely *attempts* to form a government. The ministries of François-Marshal in 1924 and Chautemps in 1930 lasted but one day each

[4] The Waldeck-Rousseau ministry of 1899–1902. Poincaré's last tenure as premier lasted almost exactly three years, but one ministry was replaced by another during the period

two saving circumstances. One is the fact that, in France as in Britain and everywhere else, the great bulk of government work is carried on continuously by the non-political departmental staffs and is but little affected by changes of party or of personnel in the higher offices. The other circumstance is that changes of ministry flow in nearly all instances from "crises" that are merely personal and parliamentary, not national, and are both in form and effect merely reconstructions. Ministerial changes in Great Britain are real changes; that is to say, one set of ministers goes out of office and a completely different set comes in.[1] In France—as in Continental multi-party countries generally—this seldom happens. Individual ministers come and go without disturbing the status of the others, and when a ministry resigns as a whole, one can almost depend upon it that a good many of its members will reappear in the succeeding one. It is not off with the old and on with the new, but usually only a matter of rearrangement—of dropping out ministers who, because of faltering parliamentary support, have become liabilities, taking in others who have followings willing to work with a reconstructed government, and reshuffling portfolios according to the requirements of a changed situation,[2] with quite possibly the former premier reappearing at the head of the new government, or even in charge of some department under a new premier.[3] As Professor Munro has said, the Chamber of Deputies may vote to overturn a ministry one day and within 48 hours give its confidence to a new ministry composed of almost the same individuals, perhaps with the same prime minister at their head.[4] Undeniably, the shifting character of French ministries injects embarrassing stops and starts into the development of public policy, slows up legislation, and prevents ministers from accumulating desirable familiarity with the work of their departments. The consequences are, however, by no means so serious as one acquainted with

[1] There are, of course, occasional minor reconstructions.

[2] Any French political leader who long remains in public life is likely to find himself at the head, at different times, of at least three or four different departments

[3] As a single illustration may be cited the second ministry of Pierre Laval which, in January, 1932, followed the first after an interval of 24 hours and differed from it only by not including the previous foreign minister, M. Briand.

[4] *The Governments of Europe* (3rd ed.), 448. M. Briand achieved the extraordinary record of being a member of 24 different cabinets—in 11 instances as premier. The reasons for the gyrations of French ministries are to be found largely in the party situation, described in Chap. xxvii below. For an illuminating discussion of the subject, see L. Rogers, "Ministerial Instability in France," *Pol. Sci Quar*, Mar., 1931. Cf. H. Finer, *The Theory and Practice of Modern Government*, II, Chap. xxiv, E. M. Sait, *Government and Politics of France*, Chap. iii, and Lord Bryce, *Modern Democracies*, I, Chap. xxi. J. Echeman, *Les ministères en France de 1914 à 1932 suivi d'un tableau des ministères* (Paris, 1932), is a useful compendium.

merely the surface manifestations might suppose; by and large, they do not extend, in their effects on national policy, beyond a slight edging of the government now to the right and again to the left. In spite of all, "France has a far more stable internal administration than the United States, a continuity in its foreign policy second to none, and an economic organization which has proved its stability during the depression." [1]

Such are some of the interesting aspects of French ministries considered in their collective capacity. Others will come to light when we look further into the workings of the parliamentary system.[2] Meanwhile, what of a minister's position in his own department? What is the internal organization of a department? What of the civil servants through whom the departments function in Paris and throughout the land?

STRUCTURAL SIMILARITY OF THE DEPARTMENTS

The inquirer who sets out to study departmental organization in France is aided greatly by one happy circumstance: structurally, the departments are all substantially alike. British executive establishments present so many different patterns that they can hardly be described except one by one. The ten executive departments in the national government of the United States show greater similarity, yet also a good deal of diversity. In France, a native fondness for symmetry and regularity has produced a series of ministries or departments so much alike, not only in general appearance, but in actual structure and workings, that unless one is delving into the minutiæ of the subject, a single description will serve for all.

THE MINISTER AND HIS DEPARTMENT. THEORETICAL AND ACTUAL POSITION

At the top of the departmental pyramid stands the minister himself. In theory, he is the supreme authority, selecting and controlling his subordinates, making all final decisions, answering all important questions, shouldering responsibility for everything that is done. It does not take long, however, for an incoming department head to learn that the theory and fact of the situation by no means coincide. He discovers that the power of appointment (wielded, in any event, in the name of the president of the Republic) is limited by rules and customs requiring fitness of candidates, and by both the legal and practical necessity of leaving the mass of his subordinates undisturbed. He finds, too, that his power to make decisions is restricted narrowly by his unfamiliarity with most of the matters that come up, by lack of time to gain such

[1] R Valeur, in R L Buell (ed.), *Democratic Governments in Europe*, 304-305.
[2] See Chap xxvi below

familiarity, by the traditional (and necessary) latitude enjoyed by the permanent officials in the department, and by limitations flowing from decisions arrived at by the ministry as a whole. In other words, the average minister finds himself in substantially the same position as a British cabinet officer—a novice surrounded by experts in the persons of the divisional chiefs and other non-political subheads in the department—so that on most matters he can do nothing but follow the lead of those who know.[1] His mornings, as has appeared, must be spent in meetings of ministerial council or cabinet and in consultation with individual ministers and members of Parliament and with private persons who are seeking favors for themselves or for their friends. His afternoons are occupied with parliamentary duties, meetings of committees, preparation of speeches, and other activities having little or nothing to do with actual administration. Yet he must at least go through the motions. As evening approaches, "letters and documents of all kinds, representing the labors of the department bureaux for the day or for several days, are hurried to his private office to be signed. The officials wait impatiently and anxiously in the ante-chamber. If he does not sign, the whole business of the department will be suspended. . . . The official says to the minister, not in words, but in his very attitude: 'Here is an order which you have not given; it refers to matters which, to all appearance, you know nothing about. We conceived it before your advent; we will execute it after your departure. But we need your signature, and, without it, can do nothing.' "[2] In nine cases out of ten (after the first few days, a larger proportion than that), the signature is forthcoming—with rarely the slightest idea on the minister's part of what it is all about. Nevertheless, the responsibility is his; and if questions are asked in the Chamber or Senate, he must be prepared

[1] Not only is the average French minister quite as much an amateur as the British, but the ceaseless reshuffling of cabinets gives him considerably less time in which to become acquainted with any particular department Today, minister of colonies, tomorrow, minister of justice, perchance next year, minister of finance! Small wonder that "a justice of the peace in the colonies feels competent alike to head the ministry of colonies, that of commerce, of public education, of foreign affairs!" R de Jouvenel, *La république des camarades* (Paris, 1914). But of course it must be remembered that, as in Britain, it is the permanent service that actually administers affairs, and that the amateur has at least some advantages over the expert as a department head. Cf p 121 above.

[2] E. M. Sait, *Government and Politics of France*, 104–105. Cf. Lord Bryce, *Modern Democracies*, I, 263 For an excellent brief analysis of the often tense, sometimes mutually scornful, relations between a minister and his "bureaus," see R Valeur, in R L Buell (ed.), *Democratic Governments in Europe*, 332–336. As there portrayed, the sole function of a minister within his department is to serve, not as an executive, but as a controller—not to administer, but to see that the *fonctionnaires* who *do* administer do not abuse their powers and violate the public liberties.

to answer them, or at all events to see that someone connected with the department does so.

THE UNDER-SECRETARIES

The most natural way of relieving a minister—particularly a premier—whose departmental burden proves excessive is to provide him with a subordinate who can take over designated parts of his work, and this has been done in the case of several of the principal departments. Under-secretaries first appeared, indeed, in some of the ministerial establishments as long ago as 1816, and in the last 20 years there have been, as a rule, as many as 10 or a dozen of them—15, in fact, in Tardieu's government of 1930. Occasionally an under-secretaryship is created primarily as a means of placating some group by awarding it a "half-portfolio"; but most often the object (in addition to relieving the department head) is to accord some important branch of the department more administrative autonomy than it otherwise would enjoy. Originally, under-secretaries were assigned administrative duties only. In time, however, they began appearing in the chambers to explain and defend ministerial policies and acts, thereby acquiring the mixed political-administrative aspect which they have today. Referred to sometimes as "ministers of the second grade," they are not actually ministers, and have no authority either to issue ministerial decrees or to countersign presidential acts. Nevertheless, they attend and take active part in meetings of the council of ministers, and when the ministry to which they are attached resigns they go out of office with it. Selected, as a rule (like the ministers themselves) from among members of Parliament, they (again like their chiefs) are entitled to appear and be heard on the floor of either chamber. In a general way, they resemble the parliamentary, as distinguished from the permanent, under-secretaries in Great Britian,[1] and service as an under-secretary is good training for a future minister.

THE DEPARTMENTAL CABINET

Pursuing further the arrangement found in a department, one next comes upon a feature which has no analogy in either British or American practice, *i.e.*, the department "cabinet." The theory in France is that the department head has need of assistance and advice derived neither from the under-secretaries (if any), who, as has been indicated, are as a rule not general assistants and advisers but rather subchiefs in charge of particular branches of administration, nor yet from the permanent staff, which is itself a group to be watched and controlled; and the need—if it be one—is supplied by a small number

[1] See p. 65 above.

of persons whom the department head, with no express warrant from either the constitution or the laws, gathers around himself primarily on the score that they are friends in whom he has confidence and from whom he can derive comfort and support. Designated as chief, assistant chief, secretary, and attachés, and picked in many instances mainly from among the minister's own relatives, or at all events from young men willing to serve merely for the prestige to be gained (as a rule, no salary is paid), these persons frequently wield considerable influence as confidential agents and advisers. Even French observers are bound to admit that as the device works there are disadvantages in it. One of these is the resentment often aroused on the part of the permanent officials, who naturally dislike being "shadowed" and reported upon by mere novices. Another is the fact that, while a minister's cabinet goes out of office with him, he commonly succeeds in slipping most of the number into the permanent service—even by resorting to special decrees opening paying positions to them—and frequently into places which they have tried in vain to reach by competitive examination. Nothing in government circles is more difficult to get rid of, however, than a personal perquisite rooted in long tradition.

THE PERMANENT STAFF

All of the departmental officials thus far mentioned are of a political, and therefore transitory, character. There is, however, a permanent staff, without which—especially in view of the rapidity with which ministries rise and fall—all administration would perpetually flounder. This permanent staff starts (at the top) with the *directeurs* of the *directions*, *i.e.*, directors of "services" into which the work of each department is divided. As a rule, there are four or five such services—purchasing, accounting, personnel work, etc.—in a department. The directors, who are assisted by subdirectors, meet from time to time, under the chairmanship of the minister as a "council of directors," and they represent their respective services on various advisory committees having to do with administrative work. Their principal business, however, is to supervise the four or five *bureaux* into which each *direction* is divided. In the bureau, we reach the basic unit in the departmental organization—the place where administrative work proper, as distinguished from direction, begins. Each has a *chef de bureau*, or chief, assisted by subchiefs; and under these are *redacteurs* (clerks) and numerous other subordinates, arranged in grades or classes. The whole gives the effect of a perfect pyramid, with the minister at the peak and with authority converging uniformly inward and upward. So self-contained, however, are the various

units, viewed laterally, that the functionaries of one bureau or service commonly have little contact with, and know little of what is going on in, the others. Taken as a whole, the average department—contrary to surface appearances—lacks anything approaching genuine integration.[1]

2. THE CIVIL SERVICE

UNDERLYING TRADITIONS AND PRINCIPLES

Directors, subdirectors, bureau chiefs and their assistants, clerks, auditors, and statisticians belong to the huge establishment comprising the national civil service; and to this important agency of administration, the authority that "really governs France," our attention must be turned as this chapter draws to a close. Two or three major French traditions supply necessary setting for the picture. The first is that of centralization. Not only has France a strictly unitary form of government, as is true also of England, but, unlike the latter, she has inherited from earlier régimes, and to this day maintains, a scheme of organization under which no semi-autonomous local jurisdictions are permitted to interfere with direct and immediate control of the national government over all of the people. To be sure, there are—as in the nature of things there must be—areas of different names and forms for purposes of local government and administration. But departments, *arrondissements*, and communes have been created by, or exist by sufferance of, the central government at Paris, their affairs are regulated far more minutely from the capital than are those of English counties and boroughs, they swarm with functionaries who belong, not to any local or regional, but solely to the national, civil service. A second tradition, coming down from the days of the Bourbon monarchy, is what the French themselves call *étatisme*, a term next to impossible to translate, but denoting a veneration for the state (as made visible in the national government) amounting almost to worship, and entailing a very broad right on the part of the state to regulate both individual and collective enterprise—even though not pushed to the extremes of present-day fascist totalitarianism. A third tradition, for which again there is little analogy in English-speaking countries, is that it is the business of the state not only to supply and administer the more usual services, such as police and highways, but to promote the arts and sciences—to maintain whatever universities are needed, to build and subsidize opera-houses and theatres, and in general to serve as custodian and director of the national culture.

[1] W. R. Sharp, *The French Civil Service* (New York, 1931), 32–42

NUMBERS

With these and related traditions still dominant, it is not to be wondered at that the French civil service is a colossal, complicated, and costly affair. Precisely how large it is numerically, no man can say; for even if there were agreement on the marginal categories, *e.g.*, part-time employees, to be included, the astonishing fact would remain that complete statistics of the service have never been compiled.[1] An American investigator who a few years ago pursued the subject as far as it seemed possible to go computes that on the eve of the World War there were on the national pay-roll some 465,500 civil servants (*fonctionnaires*[2] and employees), exclusive of some 125,000 employees of state railways, and on local government staffs some 350,000 more. The war expanded the former number by a third, and in 1927 it was estimated as being still no less than 547,148, with the number of local government employees remaining near the pre-war figure. Nowadays, the numbers are not far from 600,000 and 400,000, respectively, besides railway workers amounting (since the completion of railway nationalization in 1938) to several hundred thousand more. Even before the last great addition mentioned, about one out of every 40 inhabitants of the country was a full-time employee of some public authority. One will not be surprised to be told that taxpayers' complaints are plentiful and vehement.

RECRUITMENT: THE PROBLEM OF A MERIT SYSTEM

Like Great Britain, France has never known a spoils system such as was once the curse of the American civil service. She veered toward that sort of thing during the famous contest between President MacMahon and the republicans 60 years ago, when first the monarchist reactionaries sought to monopolize the offices, and afterwards the republicans, on regaining the upper hand, sought, by what was euphoneously called an *épuration*, to purge the service of "enemies of the republic" The fact that very rarely throughout the history of the Third Republic has any single party had full control of the ministry or Chamber of Deputies has, however, prevented patronage from being captured and distributed by a party organization, or primarily on party lines at all. There has been patronage, and abuse thereof—plenty of it. But it has been largely of a personal nature, taking the form most commonly of solicitation by senators and deputies of posts for friends and supporters among their constituents, such favors being sought at the

[1] W R Sharp, *op cit*, 14.

[2] This term is not always used with precisely the same meaning, but in general it denotes persons on the staffs of the central government who belong to what may be termed the permanent service with fixed monthly salary.

hands of ministers and prefects as rewards for continued support at the polls and in Parliament. Nowhere has pressure of this kind been employed with more telling effect. It is true that since the World War the supply of candidates for places has fallen off, and that some types of posts have actually gone begging. In general, however, employment in the public service has been widely sought, notwithstanding the meagerness of salaries and the often dreary character of the work to be performed; and insatiable demand, coupled with the practical advantage to a politician of having plenty of places at his disposal, is one of the reasons why the number of functionaries remains what it is.

NATURE OF PRESENT REGULATIONS

Starting systematically with an order-in-council of 1870, Great Britain, as we have seen, has brought substantially all positions in the national employ, except only a few in the topmost levels which are properly of a political character, under a system of recruitment by competitive examination, promotion for merit, and tenure during good behavior. Beginning with the Pendleton Act of 1883, the United States has done the same thing for approximately 71 per cent of its national service. France has proceeded differently. The country still has no general civil service law, or *statut des fonctionnaires*, and no central examining and certifying board tantamount to a civil service commission; nor does the Ministry of Finance have any powers of general supervision like those wielded so effectively by the Treasury in the British system. There are, to be sure, some scattered statutes on the subject. Thus, Parliament has guaranteed university professors and public school teachers security of tenure and immunity from political interference; the same is true of the judiciary and (although not parts of the *civil* service) the army and the navy. Outside of these professions, recruitment, classification, promotion, and tenure are regulated to some extent by general ordinances issued by the ministry, but still more largely, not on a general, nation-wide basis, but department by department and service by service, each branch of administration—even the individual bureau in a department—being regarded as an essentially autonomous unit for personnel purposes. Notwithstanding a good deal of effort to procure a comprehensive, nation-wide law, the method of regulation is still that of executive order; and while, as indicated, the council of ministers occasionally issues such orders (*décrets*) for the benefit of the entire service, most regulations (known technically as *arrêtés*) emanate only from the minister for his own department, or even, on minor matters, from a *directeur* or bureau chief for his own

particular administrative division. In the aggregate, the rules thus made are numerous; and in both the central service at Paris and the "external" service throughout the country they have wrought a great deal of improvement by introducing competitive examinations, providing means of securing promotion for merit, and making tenure more secure. Indeed, they are gradually bringing the nation to something approaching a general civil service code.

One will hardly need to be told, however, that reform has proceeded unevenly in the different departments and subdivisions, with the result that employees in one branch, although doing the same kind of work, may be on quite a different footing from those in another. Moreover, the policies pursued within any given department are subject to sudden and arbitrary change. When a new minister takes charge, he may scrupulously maintain, and even tighten up, the regulations of his predecessors in the interest of high standards. On the other hand, he may relax, suspend, or even abrogate them, subject only to such safeguards as are laid down in ministerial decrees of general application. There have been instances in which an incoming department head suspended a rule long enough to enable his hangers-on to slip into coveted posts, and then revived it without the transposition of a comma. Though this sort of thing is growing less frequent, the service as a whole still suffers from the lack of any single water-tight system of merit guarantees. Dismissals for incompetence or laxness, too, are fewer than they should be.

SOME FURTHER ASPECTS OF PERSONNEL

So far, nevertheless, has reform been carried that there is not today an important branch of the national administrative establishment in which major personnel is not recruited, at the base at all events, by open competition.[1] Within broad limits fixed by statute, decree, and administrative jurisprudence, and under the general supervision of the minister, the nature and management of competitive tests are determined for each department, and as a rule for each individual division, by a personnel bureau attached thereto, with the result that examinations are taking place at all times throughout the year, some in Paris, others in cities and towns scattered over the country. For every examination, a special board of examiners, selected ordinarily by the chief of the personnel bureau concerned, and mainly from persons already in the service, is set up, with duties which terminate when the results have been duly ascertained and reported. Although not followed invariably, a favorite form of examination is a written preliminary, followed by an oral final taken

[1] W. R Sharp. *op. cit.*, 122

by such candidates as have cleared the first hurdle.[1] A list of the successful candidates, arranged in the order of merit, is reported to the appointing authority; and, unlike the situation in the United States, it is rare that a person who is certified does not sooner or later receive a place. Examinations for posts of higher grade are designed quite as largely as in Great Britain to test the candidate's intellectual attainments and dimensions, and are in many cases of almost incredible difficulty; those for clerical and other minor positions are aimed rather at measuring ability to do specific kinds of work, on lines more characteristic of the majority of American examinations. In the past quarter-century, women have been admitted to the service far more freely than previously; and in compliance with insistent demand from Parliament, extensive preference is given to war veterans and their widows. Promotions in the service are nowadays based less on formal examination than used to be the case. Within certain restrictions, they are decided upon by the appointing officer, guided, although not wholly restricted, by an annual *tableau d'avancement* drawn up for each department or subdivision by some stipulated authority therein, and taking account not only of seniority but of merit—though not without loopholes for political influence and personal favoritism.

PAY AND PENSIONS

Handicapped by the lack of any permanent personnel agency with powers of central supervision over all branches of the service, by a tradition that civil servants must find their reward partly in the prestige accruing to them,[2] and more recently by chaotic conditions flowing from fluctuations of the currency, France has been slow in arriving at any general formula for correlating duties and compensation across office and departmental lines and according to the principle of equal pay for equal work throughout the service. Much thought has been expended on the problem since 1920, and more or less important readjustments of salary scales, in accordance with shifting currency valuations and cost of living, took place in 1921, 1924, 1926, and 1930—the last-mentioned resulting in a minimum of 9,000 francs and a maximum of 125,000 francs a year. The major problem of *péréquation* remains, however, unsolved, and the general level of

[1] Candidates for all except the lowest positions are required to have a baccalaureate degree.

[2] "A director of a division in the Ministry of Finance is reported as having replied to his minister who suggested increasing the moderate salaries paid to his subordinates 'The *fonctionnaires* in my service are sufficiently paid in the form of prestige.'" R. Valeur, in R. L. Buell (ed.), *op. cit.*, 330–331. Many of the country's best families take particular pride in their unbroken record of state service, in some cases dating from the eighteenth century.

pay is still below that prevailing in private industry. A reasonably liberal system of contributory retirement allowances helps, however, to maintain the attractiveness of the service for a people to whom nothing brings quite so much satisfaction as a sense of security for oneself and one's family.[1]

ORGANIZATION OF PUBLIC EMPLOYEES

Upwards of 60 years ago, members of the civil service began forming staff associations aimed at securing higher pay, surer promotion, and better working conditions generally. To a considerable extent, the movement was inspired by aggressive leaders of syndicalism in private industry, who looked toward the ultimate merging of all governmental with industrial functions and operations; and the earlier organizations of postmen, arsenal workers, and state railway employees not only took the form of *syndicats*, but were created with a view to active affiliation with organizations of workers in private industry. This line of policy raised difficult questions with which the government has never ceased to wrestle more or less inconclusively. Should public officials and employees be permitted to form corporate organizations at all? If so, should such organizations be allowed to affiliate with industrial labor unions? And what should be the attitude toward any asserted right to strike?

LEGAL STATUS

When the first associations appeared, they—and for that matter the organizations in private industry as well—were clearly illegal. A statute of 1884, however, cautiously opened the door to organization in private industry; in 1894, state railway employees, and in 1899 certain postal employees, were expressly authorized to organize; and a memorable Law of Associations in 1901, though specifying numerous restrictions, was generally construed as giving civil servants the same "freedom of association" that their comrades in private industry enjoyed. The further questions mentioned above, however, gave successive ministries no end of trouble. When staff associations began to seek affiliation with the General Confederation of Labor, every effort was made to discourage and prevent them; and when, in 1910, the workers on the state railways, emulating the arsenal workers in 1904 and the postal employees in 1909, undertook a nation-wide strike, Premier Briand stifled the effort by the extraordinary expedient of calling the strikers into the military service of the nation. Notwithstanding these measures, administrative syndicalism continued to spread, until on the eve of the World War nearly two-thirds of all

[1] The civil servant contributes six per cent of his salary to the retirement reserve fund, and becomes entitled to a pension at the age of 60 if he has spent a minimum of 30 years in the service.

public employees in the country, local as well as national—over 600,000 out of a total of between 800,000 and 900,000—were members of some kind of association or *syndicat;* and this remains substantially the proportion today.

AN UNSOLVED PROBLEM

One will not be surprised to learn that the effect of the World War and of ensuing years of unsettlement and hardship was to impart to civil-servant organizations a more radical slant. Whereas before 1914 the proportion of revolutionary syndicalists was small, in 1919 the principal federation of civil servant organizations formally incorporated the term *syndicat* into its official name (*Fédération des Syndicats de Fonctionnaires*) and voted to join the then revolutionary General Confederation of Labor.[1] The decade that followed was marked by little less than a state of warfare between the government and the employee organizations, broken by periods of more sympathetic attitude during the Herriot administrations of 1924–25 and June-December, 1932; and at the date of writing (1939) the tension has been only partially relieved. On the one hand, the government is willing to concede the legality of *syndicats* whose membership is restricted to employees of a single department or service performing similar functions, while refusing to sanction any federation of groups in different services, federations with groups in other countries, or affiliation with organizations of employees in private industry, and of course it recognizes no right of public employees to engage in strikes.[2] On their part, the *syndicats*—at all events their more radical elements—stoutly insist on full statutory recognition of their legality, and on unlimited freedom to effect solidarity of action across departmental lines and with their comrades in the industrial world, both French and foreign. "At its best, the *status quo* is an unstable equilibrium—a truce, as it were, between the strong arm of state authority and the organized numerical force of those who man the public services. At its worst, it occasionally becomes guerrilla if not open warfare."[3] Most employees in the lower salary brackets belong to the parties of the Left—Radical-Socialist, Socialist, or Communist—and see no impropriety in engaging in political agitation on

[1] There are now three other major federations of civil servant *syndicats*—the Postal Federation, the Teachers' Federation, and the Federation of Public Utility Workers

[2] On the other hand, the right is not formally outlawed Government employees participated along with organized workers in private industry in a 24-hour strike in 1934 in defense of "republican principles" But for several years there has been no sustained civil servant strike, and the government prefers not to agitate the matter

[3] W. R. Sharp, *op cit*, 476

CHAPTER XXV

Chamber of Deputies and Senate

IF a highly centralized administrative system, with extraordinarily large powers of regulation by decree, is characteristic of France, no less so is the nation's devotion to the principle of political democracy. To be sure, this principle finds somewhat more cautious application than in a number of other countries. Women have not been granted the suffrage, senators are not elected directly by the people, the president of the Republic is chosen, not by popular vote, but only by the senators and deputies. Nevertheless, despite much criticism by radicals and reactionaries alike—in an era in which neighboring peoples have bowed low before the god of fascism—democracy as a scheme of political life has continued to command the national allegiance. The instrumentalities through which it functions include the elected assemblies, or councils, of local areas, *i.e.*, communes, districts or *arrondissements*, and departments, they include also Parliament, which enacts laws, levies taxes, appropriates money, and controls administration for and in the name of the nation as a whole. Parliament is the paramount agency of representative government in France no less than on the opposite shore of the Channel.

A COUNTRY DEVOTED TO POLITICAL DEMOCRACY

Upon the break-up of the Estates General in 1789, France definitely abandoned the mediaeval type of national assembly organized on a basis of "estates" or "orders." For almost a hundred years longer, however, she wavered between unicameralism and bicameralism. During the Revolution, ultra-democratic reformers saw to it that their parliaments, actual or proposed, consisted of one house only. Conservatism having regained ground, the constitution of 1795 introduced a second, or upper, chamber, and to this arrangement succeeded the undemocratic and irregular legislative régime of Napoleon I. Under the constitutional charter of 1814, the two-house principle was revived and adhered to continuously for 34 years, though the legislative organ of the Second Republic (1848–52) consisted of only one

OSCILLATION BETWEEN ONE-HOUSE AND TWO-HOUSE PARLIAMENTS

United States are the branches of a national representative body nowadays so evenly balanced. As in the United States, too, the Senate has—in addition to its equal share of legislative power—certain functions peculiarly its own. One is the right to give or withhold its consent to a dissolution of the Chamber of Deputies before the expiration of its mandate. To be sure, in the absence of dissolutions, this power appears to have only potential importance. To be sure, too, the most probable future change in the national constitution will take it away altogether. The very fact that it has stirred so much discussion among constitutional reformers, however, indicates that, in at least a negative way, it is significant. A second special senatorial function, and one which from time to time is actually exercised, is that of serving as a high court of justice "to try the president of the Republic or the ministers and to take cognizance of attempts upon the safety of the state."[1] In cases of impeachment, the Chamber prefers the charges, in cases of attempt upon the security of the state, the ministry; in both instances, the Senate hears the evidence and brings in the judgment.[2] There is, however, no senatorial confirmation of appointments as in the United States; and treaties, if submitted to Parliament at all, require action by the two houses alike.

THE CHAMBER OF DEPUTIES:

1. CONSTITUTIONAL AND LEGAL BASIS

It has sometimes been a subject of astonished remark that whereas one of the three constitutional laws of 1875 was devoted almost entirely to defining the composition of the Senate, those instruments can be scanned from end to end without discovering anything on the structure of the Chamber of Deputies beyond the laconic provision that the members "shall be elected by universal suffrage, under the conditions determined by the electoral law."[3] It is not, however, strange that the matter should have been left thus. The nature, and even the existence, of the Senate was a subject of contention, and the controversy over it naturally resulted in definite decisions being written into the fundamental law. A representative body chosen directly by

[1] Law on the Organization of the Senate, Art. 9

[2] When sitting as a court, the Senate has full power to summon witnesses, punish persons who refuse to appear, administer oaths, and obtain evidence by every means that can legally be employed by an ordinary court In the nature of things, the Senate is not often called upon to discharge this function, the most notable instances in the past 20 years being the trial of a former minister of the interior, Louis J Malvy, in 1918, of ex-Premier Joseph Caillaux in 1918–20, and of Senator Raoul Peret in 1931. On the Senate as a court, see A. Esmein, *Éléments de droit constitutionnel* (8th ed), II, 521–536

[3] Law on the Organization of the Public Powers, Art 1.

the people was, however, assumed from the start. There was nothing to be settled concerning it except such questions as who should be permitted to vote, what electoral areas should be employed, and how the elections should be conducted; and these were matters that could very well be left to be regulated by ordinary law. An American would have expected at least the term of service of deputies to be specified in the constitution. Under the cabinet system as it was expected to operate, however, the Chamber would be subject to dissolution at any time, and, at most, all that would be required would be agreement upon a maximum period, like the seven- (present five-) year period in Great Britain, for the life of any parliament that contrived to escape dissolution at an earlier stage of its existence. As is well known, the constitution of the United States leaves many aspects of the structure of the House of Representatives to be regulated by act of Congress, or even, as in the matter of the suffrage, by action of the individual states. Even in the case of the Senate, France, in 1884, lifted all provisions concerning elections out of the constitution and placed them on the basis of statute law.[1] Before the National Assembly adjourned in 1875, preparatory to the launching of the new constitutional régime, it passed a comprehensive electoral law, under which, as amended and supplemented on several later occasions—most recently, in an important way, in 1927—the composition of the Chamber is now determined, together with the electoral process generally.[2] As we shall see, most of the newer legislation has had to do with changing the nature of the electoral districts, although some has been aimed at promoting electoral freedom and honesty.

2. PRESENT COMPOSITION

As it stands today, the Chamber of Deputies numbers 618 members — 183 more than the American House of Representatives, and, curiously enough, almost exactly the same as the British House of Commons. Of these, 599 represent single-member districts in France proper (including 26 sitting for districts in the annexed territory of Alsace-Lorraine), nine come from Algeria (which is considered an integral part of France), and 10 are elected in certain of the overseas colonies.[3] Unlike Great Britain, France endeavors to carry out frequent reapportionments with a view to equality of electoral power for equal numbers of people. The ideal, however, has never been

[1] See p. 430 above.

[2] The law of 1875 will be found, in English translation, in H. L. McBain and L. Rogers, *The New Constitutions of Europe*, 534–540.

[3] See R. A. Winnacker, "Elections in Algeria and the French Colonies Under the Third Republic," *Amer. Polit. Sci. Rev.*, Apr., 1938.

attained in more than very rough fashion, for the reason that, although reapportionments are always made in advance of an election if a census (usually at five-year intervals) has been taken since the last election, the electoral districts have in the main been formed, not *ad hoc* and irrespective of areas utilized for other purposes, but of departments, *arrondissements*, or subdivisions or combinations of such local-government units, commonly having rather widely differing numbers of inhabitants.[1] With a population that grows but slowly, it would seem that it ought to be comparatively easy to hold down the membership of the Chamber to a figure compatible with the highest legislative efficiency; and at certain reapportionments the number of seats has actually been reduced. A large Chamber, however, is rooted in tradition;[2] politicians naturally prefer it; localities are unwilling to give up electoral influence to which they have grown accustomed, and as a result the assemblage in the Palais Bourbon is now rivalled in numbers among national legislative bodies only by the two houses of the British Parliament and by the all but defunct German Reichstag. A deputy represents, on the average, 70,000 people, as compared with the 75,000 represented by a British commoner at Westminster, and the 282,000 (under the reapportionment of 1931) by a congressman in the United States.[3]

3. TERM OF SERVICE

The full membership of the Chamber is elected simultaneously for a four-year term. Earlier French constitutions prescribed terms of two, three, five, and even six years. But the authors of the electoral law of 1875 compromised on four, and the decision has proved fully justified. Some people consider that it would be better if the American House of Representatives were chosen for a period of similar length. Theoretically, the Chamber may be dissolved at any time by the president of the Republic, with the assent of the Senate. Actually, as we have seen, there has been only one dissolution (in 1877) appreciably in advance of the end of the four-year period,[4] and every newly elected Chamber can look forward with assurance to filling out substantially its full quadrennium. As a result, parliamentary elections normally take place in France with almost the same unvarying regularity as congressional elections in the United States, though only half as frequently—*normally*, however, rather than invariably, for the reason

[1] See p. 585 below

[2] The Chamber started, in 1876, with 533 members. Earlier French representative bodies were even larger.

[3] Since 1928, the pay of deputies and senators alike has been 60,000 francs a year, equivalent, at the present rate of exchange, to $1,400.

[4] See p. 450 above.

that, the term of members being a matter of statute only, Parliament sometimes finds it convenient to extend the life of a given Chamber somewhat beyond four years, as it did in 1893 and again in 1923 in order to throw the elections in the spring of the year, and also in 1918 in order to avert an election in war-time.[1] The argument has sometimes been advanced that, with a view to greater continuity in the Chamber, it would be better if half of the members were chosen every two years. The Senate, with a nine-year term, is renewed by thirds triennially, and it is asked why the same principle should not be applied to the other branch. The usual reply is that under a cabinet system of government it is essential that the chamber which has the primary power to make and unmake ministries shall be completely and instantly responsive to the will of the nation; which means that when dissolutions take place, with a view to determining whether the people are behind the ministry or the chamber, the entire electorate should have an opportunity to express itself simultaneously. The argument—which certainly holds for most countries having cabinet government—is, of course, weakened for France by the fact that actually there are no dissolutions. There is much to be said, however, on general principles for bringing into session from time to time at least one parliamentary branch which mirrors the opinion of the whole nation at a given moment.[2]

4. QUALIFICATIONS OF MEMBERS

Deputies are required to be voters (which presumes citizenship[3]) at least 25 years of age, and to have complied with existing law relating to military service. But that is all. Members of families that at any time have reigned in France are disqualified; and there are many public offices (although a considerably smaller proportion than in Great Britain) which are legally "incompatible" with membership. Otherwise the doors are open. In the absence of any residence requirement, a few deputies are found sitting for districts in which they do not live.[4] French voters, however, do not take so kindly to non-

[1] More remarkable still, the life of the Chamber elected in 1936 was, in midsummer of 1939, extended to 1940 by simple executive decree, the object being to avert domestic political controversy in a period of international crisis.

[2] It may be noted that in 1888 the Floquet ministry, and in 1910 the first Briand ministry, sponsored a plan extending the life of a Chamber from four to six years, with one-third of the members elected every two years, that in 1902 the Chamber, and in 1913 the Senate, voted for a six-year term, and that bills of similar purport have made their appearance in later years

[3] A citizen by naturalization rather than by birth must have been naturalized at least ten years.

[4] For example, Léon Blum, Socialist leader and head of the "Popular Front" government set up in 1935 (see p. 548 below), although a resident of Paris, has since 1929 represented a district in southern France.

resident representation as do English voters, largely because they are more inclined to look upon their deputy as an emissary to procure favors for his district; and it often happens, as in the United States, that good men who lack the necessary political support in the locality of their residence are obliged to terminate a parliamentary career, or are unable to secure entrance upon such a career at all.[1] Women, not being voters, are construed to be ineligible. Socialists have long urged a law forbidding any minister or member of Parliament to be connected with a business establishment holding government contracts or concessions, and also making bankers and railway magnates ineligible to sit in either chamber. Parliament has as yet gone no further, however, than to prohibit, in 1928, acceptance by members of either house of any position as director, administrator, or controller of an industrial, commercial, or financial establishment during their terms.

THE ELECTION OF DEPUTIES:

1. THE SUFFRAGE:

Deputies are elected by direct vote of the people. In Great Britain, as we have seen, there is one set of qualifications for participating in parliamentary elections and another for taking part in the election of county and borough councillors and members of other local bodies. In the United States, too, one finds differing electoral requirements, for national as well as for other elections, as one goes from state to state. In France, on the other hand, there is a single electorate, defined by national law, for all public purposes; if one can vote in a parliamentary election, one can vote also in a local election, and *vice versa*. Four definite requirements are laid down: (1) the voter must be of the male sex; (2) he must be at least 21 years of age; (3) he must be a French citizen (by birth or naturalization), in possession of full civil rights; and (4) he must be duly registered.[2] Tax-paying requirements long ago disappeared, and of educational, or literacy, tests there has never been a trace. There are, of course, certain disqualifications. Inmates of insane asylums, bankrupts (for a period of three years), persons judicially pronounced incapable of managing their own affairs, soldiers and sailors in active service, and convicted offenders judicially deprived of their civil rights may not vote. All told, however, the Republic has one of the most liberal suffrage systems in the world—*for men*;

[1] Professor André Siegfried, well known in the United States, writes: "After completing my university years, I desired to choose politics as a career, and accordingly tried to secure a seat in the Chamber of Deputies, but after renewed efforts it appeared to be impossible, in the constituencies of my own town my tendencies probably did not fit, and in every other constituency I was considered a stranger." *France; A Study in Nationality* (New Haven, 1930), p. v.

[2] Requirements for registration are indicated below (p. 492).

for in France, "universal suffrage" has always meant "manhood suffrage."

A. THE PROBLEM OF WOMAN SUFFRAGE

Almost alone among European states, France experienced no suffrage changes as a result of the World War. She has today, however, two suffrage problems, one major, the other minor though potentially important. One will hardly need to be told that the major question is that of giving the ballot to women. Although there is hardly another country in which individual women, such as Marie Antoinette and Madame Roland and the Empress Eugénie, have exerted so much influence on the course of public affairs, French women in general have never acquired any political status. They cannot vote in a parliamentary or local election; they cannot be chosen to a town council or any similar body; they cannot serve on a jury; until a few years ago, they could not even act as legal witnesses at weddings.[1] A woman suffrage movement got under way near the opening of the present century—about the time when the "suffragettes" of Great Britain entered upon the most intense and dramatic stage of their campaign. But whereas the stimulus of the War served to carry the British movement to victory in 1918, effort in France has to this day fallen short of its goal. To be sure, starting in 1919, the Chamber of Deputies has no fewer than nine times passed a woman's suffrage bill or added a rider on the subject to some general electoral bill. On every occasion, however, the Senate—when it deigned to consider the matter at all—has voted unfavorably; and notwithstanding that the movement is well organized and ably led, it still has a high hurdle to surmount in that body. A main deterrent is the fear that women, who since the World War have outnumbered men by some two millions, would be influenced too greatly in their decisions at the polls by the Catholic clergy.[2]

B. "FAMILY VOTING"

To an Englishman, long troubled by the problem of getting rid of plural voting, it might well come as somewhat of a shock to learn that in France, where no plural voting has ever prevailed, it has been seriously proposed that something of the kind be introduced. Yet such is the case. No one suggests giving a man more than one vote because of property that

[1] On the other hand, they are found in the civil service (as teachers, clerks, etc.), and in 1935 three were appointed under-secretaries of state.

[2] J. Barthélemy, *Le vote des femmes* (Paris, 1920), presents the case for women's enfranchisement. Cf. A. Leclerc, *Le vote des femmes en France* (Paris, 1929), and F. I. Clark, *The Position of Women in Contemporary France* (London, 1937). It is worthy of note that in a neighboring Latin country, *i.e.*, Spain, women gained the ballot in 1931—although as a result of the civil war their electoral status is at present (1939) uncertain.

he may own or occupy, or because he holds a degree from a university. But supporters have arisen for a plan under which heads of families would be given extra votes bearing some relation to the number of their children, *e.g.*, one such vote for each child under age, on the theory that such persons have more at stake in the policies of the government than do others—although there is also an idea that the device might do something to stimulate the birth-rate. When first broached, the proposal drew ridicule as merely a "crank idea." Later, however, it won more tolerant consideration, and although there is at present no prospect that it will be adopted, the Chamber of Deputies has more than once debated it, an extensive literature on it has grown up, and no discussion of suffrage matters proceeds far before *le vote familial* comes in for mention.[1]

2. REGISTRATION OF VOTERS

The terms on which the suffrage is exercised are fixed by national law. Responsibility for keeping and annually revising the lists of eligible voters falls, however, to the authorities of the smallest unit of local government, the commune, and, as has been indicated, the same lists serve for elections of all kinds—communal, district, departmental, and national. In each commune, the task of overhauling the local list is performed between January 1 and March 31 of every year by an electoral commission consisting of the mayor, an appointee of the communal council, and an appointee of the prefect of the department—the necessary information being obtained almost entirely from records kept in the mayor's office for use in connection with compulsory military service. The voter himself is put to no trouble, and the persons in charge do their work without extra compensation. One gets one's name on the list in a given commune (assuming that all other qualifications are met) by (1) having resided there at least six months before the close of the registration period, (2) proving that notwithstanding sojourn elsewhere the commune is his "legal" domicile, or (3) showing that he has paid direct taxes in the commune for at least five years,[2] and no one may vote whose name does not appear on the eligible list. If on inspecting the list as kept in the mayor's office anyone finds that he has been overlooked or ruled ineligible, he may appeal to the commission (enlarged by two members designated by the communal council for the purpose); and, if

[1] The best brief explanation of the proposal is R. K. Gooch, "Family Voting in France," *Amer. Polit. Sci. Rev.*, May, 1926. For a French discussion, see E. Harraca, *Sur le vote familial* (Paris, 1930).

[2] Thus, one may vote in a commune other than the one in which he lives, by reason of (1) its being his legal domicile or (2) paying direct taxes in it. If eligible in more than one, he must decide where he will vote, for he can vote only once.

not satisfied with the outcome, he may carry his case to the local justice of the peace, and ultimately (on a question of law) to the Court of Cassation at Paris. Notwithstanding that the registration system looks adequate enough, the results that it yields—if one may judge by the complaints voiced—are sometimes not all that they should be.

3. VOTERS AND NON-VOTERS

On the whole, Frenchmen take their electoral duties seriously. The proportion of the total eligible electorate that went to the polls at general elections between 1876 and 1936 varied between 69 and 84.3 per cent, which compares favorably with the showing made by British voters and decidedly so with some of the records established in the United States.[1] There is, however, enough non-voting to have stirred discussion and criticism. Falling at stated intervals, elections—national as well as local—sometimes take place during periods of political tranquillity, when, according to all experience, fewer persons will turn out to vote. Changes in the electoral system, such as the adoption of a partial scheme of proportional representation in 1919, also puzzle people and lead some to stay away from the polling places. Other voters may be deterred by unwillingness to support some *bloc* or alliance to which the leaders have sought to pledge them. Furthermore, unlike Great Britain and practically all of our American states, France makes no provision for absent voting, which undoubtedly accounts for still other abstentions. And of course there are always people who are politically indifferent or definitely out of sympathy with "parliamentarism" and unwilling to lend their aid in keeping it going. In general, voting is heaviest in urban rather than rural areas, and in sections where the parties of the Left are strongest; and with local party agencies less adequate than those relied upon for getting out the vote in Great Britain and the United States, persons who have to be induced to go to the polls are looked after frequently by the priests, by mayors, municipal councillors, schoolmasters, and other government officials and employees, by landed proprietors, and by other individuals of influence and power in the community. These are, of course, people with more or less of an interest in the outcome; and with a view to stimulating the voter as a matter of abstract principle, without reference to political motivations, both absent voting and compulsory voting have many times been proposed. On a limited scale, absent voting was experimented with in 1919 and 1924; but at present it has no place in the system. Compulsory voting was included in a comprehensive elec-

[1] See p. 171, note 1, above.

toral bill of 1932 which passed the Chamber of Deputies but met defeat in the Senate.[1]

4. THE NOMINATION OF CANDIDATES

On the selection of candidates for seats in the Chamber, it is not easy to speak with precision There is no single method· party groups use whatever means they desire; many candidates are not really "selected" at all, but only self-announced. The matter has never appealed to the French as being suitable (at all events, under French political conditions) for rigorous nation-wide regulation, and originally there was no law on the subject at all. In 1889, however, it was forbidden that a man should stand as a candidate in more than one electoral district at the same time, and as a means of checking up it was further provided that in order to be reckoned a legitimate candidate one must, at least five days before a given election, deposit with the prefect of the department within which the polling was to take place a simple declaration, witnessed by a mayor, naming the constituency from which he proposed to seek election; and to this day all that is required is such a declaration, made eight days in advance, either in person, through an agent, or by mail. It is interesting to note, however, that political parties (chiefly of the Left) which in later years have achieved substantial organization and stability have developed accepted nominating procedures under which local committees elect delegates to a convention in the constituency, the convention chooses a candidate and proposes him to the party's national executive committee, and the latter "invests" him, *i.e.*, gives him its formal stamp of approval. In the case of parties not so well organized, candidates continue as a rule to be put up by various sorts of self-constituted local caucuses or committees, with or without any confirmation by a central party agency. And, as has been indicated, numerous candidates are merely self-announced. Speaking generally, central party control plays no such rôle as on the opposite side of the Channel. For this and other reasons, the number of candidates is always large, *e.g.*, 3,837 at the election of 1922 and 4,815 at that of 1936.[2]

5. THE ELECTORAL CAMPAIGN

A parliamentary election takes place on a date—always a Sunday—fixed by presidential decree, and the decree must be issued at least 60 days

[1] H. F. Gosnell, *Why Europe Votes* (Chicago, 1930), Chap. ii, and references there cited. On compulsory voting, see a report by Professor Joseph Barthélemy in *Rev. du Droit Pub. et de la Sci. Polit*, Jan, 1923, advocating a law which would punish failure to vote by a fine of five francs for the first offense, five per cent of the offender's income tax for the second, and disfranchisement for the third

[2] At the election of 1932, the district of St. Gironde, in the department of Ariège, set a high-water mark with 85 candidates for a single seat.

before the term of the existing Chamber is to expire, and 20 days before the new election is to be held. The latter regulation might be taken to mean that the campaign is crowded, as in Great Britain, into a period of not more than three weeks. The approach of an election, however, is as definitely known months in advance in France as in the United States, and the canvass for votes, although naturally more vigorous during the so-called "electoral period," is by no means confined to it; indeed, the presidential decree is usually issued considerably more than 20 days in advance—with the result that the "electoral period," and therefore the more intense portion of the campaign, ordinarily extends through, and even beyond, six weeks. To a larger extent than in earlier days, the appeal to the voters is made according to plan and by concerted effort. The typical campaign is still, however, that carried on by the individual candidate largely with his own resources and in his own way, aided, of course, by his local friends and supporters. He issues his own *profession de foi*, or platform, stresses issues or arguments which he thinks will most appeal to the people whose votes he seeks, and in doing so oftentimes wanders far from the principles or programs of the party or coalition with which he is ostensibly identified. Disciplinary power of party organizations over candidates is growing, but still—except in the case of the Socialists and the Communists—has far to go before attaining the level reached in Great Britain and the United States. The personality of the candidate continues to count for decidedly more than in Britain; it is commonly to this that the voter looks rather than to the organization—if indeed any organization worthy of the name exists.

6 CAMPAIGN EXPENDITURES

The art of campaigning is largely the same everywhere, yet with interesting national variations. French candidacies are floated on floods of oratory, especially in the rural districts. The press is used extensively; and radio broadcasting, although turned to political uses later than in Great Britain and the United States, is growing more common. A favorite method of appeal is, however, the placard or poster, and at every election the multi-colored *affiches électorales* on the billboards of Paris and other principal cities afford no end of both information and amusement for the populace, as well as a good deal of instruction for the student of electoral psychology. So lavishly were multi-colored posters employed in former times by candidates having ample war-chests, and so often were the humbler offerings of poorer candidates plastered over or torn from their places, that it became necessary to remedy matters by requiring, under a law of 1914, that for elections of every kind communal authorities should provide official billboards (in numbers proportioned to the popula-

tion of the commune) and allot an equal amount of space on each to all of the candidates, at the same time forbidding electoral placards or appeals of any sort to be put up in any other places.[1] As a means of further equalizing opportunity, a law of 1919, made permanent in 1924, gives every candidate a chance to send post-free to all of the voters in his district two sample ballots, and also a circular not exceeding four pages, printed by the public authorities though paid for by the candidate himself. As to how much, beyond this, the candidate may spend, or allow to be spent, in advancing his cause, the laws are completely silent. Except in respect to posters and the franked matter mentioned, the French have not chosen to regulate campaign outlays at all, either by placing limits on the amount as in Great Britain and the United States, or by outlawing certain sources of contributions as in the United States, or by requiring some form of publicity as again in the case of the United States. It is, therefore, impossible to say with assurance how expensive French elections are. The most careful study of the subject that has been made leads, however, to the conclusion that candidates who put forth a really serious effort to secure election to the Chamber spend, on an average, something like 50,000 francs (some $1,150)—less than is spent by most parliamentary candidates in Great Britain, although the multiplicity of candidates in France gives rise to a total outlay nearly if not quite equal to the figure on the other side of the Channel.[2] French candidates are not required to make an electoral deposit; and since their outlays on "nursing" their constituencies are smaller than those of English politicians, there can be no doubt that it costs a good deal less to sit in the Palais Bourbon than in the Palace of Westminster.

7. THE POLLING: A. FORM AND DISTRIBUTION OF BALLOTS

Voting is by secret ballot, and in all parts of the country on the same day. No other elections are held at the time; in each constituency only one seat is to be filled, and since only one candidate's name appears on a ballot, the ballot is even "shorter" than in Great Britain, where, although again only one seat is to be filled in a district, the two, three, or occasionally more candidates are listed on a single ballot-paper. The use of written or printed ballots in French elections dates from as far back as the Revolution. Until a quarter of a century ago, however, the technique

[1] At the election of 1932, there were some 10,000 of these billboards in Paris, frequently in the form of boxes, on posts, built around trees along the boulevards. Radio broadcasting was for the first time employed extensively in the election of 1936.

[2] J. K. Pollock, *Money and Politics Abroad*, 284–285. It goes without saying that in individual cases decidedly large sums are sometimes spent.

of ballot-voting left much to be desired; and even today it is not beyond criticism. It has always been, and still is, left to the candidates, or to the local organizations supporting them, to procure and pay for supplies of ballots bearing the candidate's name, and for the voters to carry with them to the polls (or receive from interested persons there) whatever ballots they desire to use; and though early required by law to be on white paper, with no outward marks or signs, ballots circulated in behalf of given candidates or parties could usually be made distinguishable by their size, shape, texture, or manner of folding. Moreover, when presented at the polls, they were not deposited in the electoral urn (used by the French in lieu of a ballot-box) by the voters, but merely handed to the officer in charge, commonly the mayor. Under arrangements such as these, the voter was shielded by little secrecy; and in 1913–14 legislation improved matters considerably by requiring (1) that when the voter arrived at the polls, he should, after being properly identified, be given an opaque envelope, provided by the state, (2) that he should retire to the seclusion of a booth and there seal the ballot of his choice (unmarked, of course) in the envelope, and (3) that he should then personally deposit the envelope in the urn. And this is the system today—ballots still ordered and paid for privately (though printed by the state), sent in advance by the candidates or organizations to the voters (though also handed out at the polls to those who need them), and bearing in each case the name of but a single candidate. Unless the voter chooses to keep his ballot-paper in his pocket, or otherwise conceal it, when approaching the urn, it is usually possible for spectators to know how he is going to vote.

B. CASTING AND COUNTING THE VOTES

As a rule, the polling takes place in the *mairie*, or town hall, of the commune, though in more populous communes it is necessary for the department prefect to designate additional polling places, which are usually schoolhouses. At each polling place, a "bureau" of five persons is in charge—the mayor and four members of the communal council, or, in case there is more than a single polling place in the commune, five *adjoints* (assistants) or councillors whom the mayor designates; and this bureau, aided by a poll clerk named by the mayor, keeps order and decides all questions that arise. Unlike American election officials, these persons invariably give their services free, which is a main reason why French elections are uncommonly inexpensive. Before presenting himself at the polls, the voter has received not only the ballots and campaign circulars for post-free distribution of which the law provides, but also a *carte électorale*

bearing his name, his number on the register, and the date and place of the polling, and when he arrives, he first of all hands this card to a member of the bureau, who reads off the name for the secretary to check on the list of electors before him. The card is returned, because, should no candidate receive a majority, a second polling will be necessary; a corner, however, is clipped off to prevent it from being used a second time during the initial polling, and also to provide means of checking the number of votes that have been cast. Having performed his function in the voting booth and deposited his envelope in the urn, the voter, who in America would be expected promptly to take his departure, may remain as a spectator as long as he likes, and not simply to look silently upon the proceedings, but to gossip and argue with his neighbors until perchance the hubbub compels the officials to call in a gendarme to clear the room. The polling ended, the bureau counts the votes, aided by "scrutineers" drafted from among the lingering voters if the task promises to be heavy; and thereupon the results are certified to the higher authorities, by whom they are announced.[1]

C. "BALLOTTAGE" (SECOND BALLOTING)

In view of the multiplicity of candidates in most districts, it goes without saying that more often than not no one receives a majority of the votes cast. In England, where three-cornered contests usually have the same outcome, there is strong demand, as we have seen, for some procedure that will ensure majority election; and one of the means proposed to that end—although not the one most favored—is a second ballot, or "run-off" election, between the two candidates standing highest.[2] The second ballot has been employed extensively in Continental Europe, and as the law now stands in France it is brought into play in any district in which, at the first balloting, no candidate receives a clear majority over the combined vote of all of the others. Contrary to practice in the old German Empire, but in line with all of her own earlier usage, France permits any and all of the original candidates to remain in the race, and even new ones to enter, and at the second balloting, whoever gets the largest number of votes wins. The period between ballotings—now shortened from 15 days to eight—is likely to witness plenty of bargaining, as a result of which the number of surviving candidates may be reduced, even to two. Needless to say, the outcome may very imperfectly

[1] The election returns are examined and contested elections decided (often on partisan lines) by the Chamber of Deputies itself, under a form of procedure described in E. M. Sait, *op. cit.*, 181–183. On Great Britain's different usage, see pp. 171–172 above.

[2] See p. 175 above.

reflect the will of the district electorate as a whole. At the election of 1936, only 191 seats out of the total 618 were won at the first *tour*, leaving 427 to be contested a second time—truly the fulfillment, as a recent writer on electoral problems aptly observes, of a politician's dream.

D. PURITY OF ELECTIONS

As early as 1852, certain types of electoral offenses, principally false registration, intimidation, and bribery, were placed under the ban, but 60 years afterwards no less a witness than M. Briand testified that corrupt practices still largely escaped repression. The situation is now much improved. To be sure, ballot boxes are still occasionally stuffed; the method of counting allows too great opportunity for fraud; food and drink are sometimes dispensed to voters, and grosser forms of bribery come to light. Nevertheless, the laws of 1913 and 1914 gave the country a corrupt and illegal practices code worthy of comparison with legislation of similar nature in Great Britain and the United States, and, on the whole, elections nowadays are conducted honestly and fairly. This does not mean that the electorate is exempt from pressure applied with the object of influencing it to vote, or not to vote, in certain ways. From Napoleonic times onward, the government at Paris notoriously and systematically employed the prefects, subprefects, and other local functionaries—including even the village schoolmasters—as agents in inducing the people to give their support to candidates regarded favorably at the capital; and, although such tactics are now followed less openly and boldly than a few decades ago (indeed, the prefects are nowadays officially instructed to keep hands off), complaint is still heard that the government—as is notoriously true of governments in the Balkan states—"never loses an election."[1] The Catholic clergy, especially in the rural districts, has traditionally thrown its influence against political leaders and elements regarded as anti-clerical or radical. Here, too, the situation is better than formerly, although it is believed still true that some priest knows how almost any peasant elector will vote. Large employers and landlords are similarly suspected of occasionally seeking to swing the votes of their employees and tenants.

THE PROBLEM OF ELECTORAL AREAS

An electoral system otherwise generally stable has been changeable indeed in the matter of areas employed as units for representation. For 60 years, the country has been the stage for a running debate on

[1] Of course, as evidenced by the outcome of the 1924 election, the generalization is not wholly and literally accurate. See p. 547 below.

the subject, punctuated by experiments first with one scheme and then with another; and the question is potentially as open today as at any time in the past. Fundamentally, the issue is between small electoral districts entitled to one deputy apiece and larger districts entitled to several. When the former plan has prevailed, the area employed has commonly been the *arrondissement*, and the system has been termed *scrutin uninominal* or *scrutin d'arrondissement*. When the other scheme has been in effect, the area has been the department itself (or some specially formed division thereof), and, the group of deputies being elected on a general ticket, the plan has been known as *scrutin de liste*. Over the opposition of Gambetta and his followers, who considered that it weighted the electoral scales in favor of the monarchists, the single-member system was adopted in 1875. Ten years later, republican strength had so grown that a shift to the other plan became possible—only, however, to open the way for the demagogue Boulanger, in the elections of 1889, to get himself elected in numerous large areas and threaten the nation with a dictatorship by plebiscite. So unpleasant was the experience that the country went back forthwith to the single-member plan, to which it clung until after the World War, even though all of the while sharply divided on the subject. In 1919, the list system was adopted again, in 1927, the single-member system once more; and the latter, although revived more or less as a makeshift and violently opposed in many quarters, is still in operation.

ARGUMENTS PRO AND CON

No one who looks into the historic controversy can fail to perceive that politicians and groups have been guided in their attitudes chiefly by what they thought would be the practical effects of one system or the other upon their own fortunes. Plenty of arguments of more solid character have, however, been adduced for and against both plans. The small single-member district is defended on the ground of simplicity and convenience, the opportunity which it gives the voter to know the candidates (and the deputy to know his constituents), and the larger chance (inferior only to that given by proportional representation) afforded minority parties to win seats. On the other hand, it is opposed and the larger type of district favored on the grounds, among others, (1) that the single-member plan narrows the range of choice and tends to the selection of inferior men—"little districts make little deputies"; (2) that it causes the deputy to be regarded, and to regard himself, too largely as a promoter of the interests of his own local community merely, rather than those of

the country as a whole,[1] (3) that it renders it easier for the government to put pressure on the voters and control the results of elections, and (4) that, without making any assured provision for minorities to be represented equitably, it enables many deputies to be elected, where the number of candidates is large, by simple plurality, which commonly means by minority.[2]

AN ILL-FATED EXPERIMENT WITH PROPORTIONAL REPRESENTATION

Down to 1919, whenever the multi-member-district plan was in use, the parties normally put up as many candidates in a district as there were places to be filled, and the list that secured a majority (or at the second balloting, a mere plurality) was declared elected, to the exclusion of any representation for minority groups generally. When, however, in the year mentioned, the multi-member system was revived, there was coupled with it a feature for which growing numbers of political leaders had been clamoring, namely, proportional representation. Indeed, the list system would hardly have been restored at all without this new feature, designed to bring France into line with what many people considered the most advanced electoral practice as exemplified not only in Switzerland, Belgium, and the Scandinavian countries, but in Germany, Austria, and other Continental states endowed with new post-war governments. Whether the proportional system would have proved a success had it been adopted in the unrestricted form prevailing in the other countries mentioned, one cannot say. As it was, the plan installed, being the product of hard-won com-

[1] As Professor Sait points out (*Government and Politics of France*, 150), this undesirable tendency of the representative to become a mere errand-boy for his constituents is characteristic of our representative system in the United States, as it is of the French system. On the other hand, it hardly exists in Great Britain, so that the single-member district does not invariably work out in such a fashion In Continental democracies, however, this problem of electoral areas seems to present an eternal dilemma, under a single-member-district system, the deputy comes too close to his constituents, in the sense of becoming a mere agent to solicit favors for them, under a multi-member-district system, he is too far removed and the relation becomes too impersonal.

[2] Apropos of the last-mentioned point, statistics seem to show that all the way from 1876 to 1919 the Chamber of Deputies was elected, on the average, by less than 45 per cent of the qualified voters of the country—which, of course, resulted in legislation supported by the authority of only a minority of the electorate (rather a small minority indeed, when it is considered that acts and decisions of the Chamber were the work of merely a majority of the deputies who represented the 45 per cent) The classic example in this connection is the law of 1905 providing for separation of church and state—a measure placed on the statute-book by the votes of 341 deputies who had been chosen to the Chamber by only 2,647,315 out of a total of 10,967,000 electors R. L. Buell (ed.), *op. cit.*, 397–398.

promise between Chamber and Senate, was only a partial, hybrid scheme; and trial of it in two general elections led, in 1927, to complete abandonment of it, followed by restoration of the now existing single-member system. The principal peculiarity of the law of 1919 was that while it provided for election of deputies in departments or divisions thereof returning from three to six members each, and for election under a scheme of party lists as in Belgium and elsewhere, it stipulated that all candidates voted for on a majority of the ballots cast in a district should be declared elected on that basis, leaving the proportional principle to be brought into play only in allotting such seats as still remained to be filled. At the very first election held under the law—that of 1919—a number of the more conservative groups, allied in a *Bloc National*, pooled their lists and by thus massing their strength brought it about that in as many as 20 of the departments every seat was filled without any application of the proportional principle at all. The Unified Socialists, polling a quarter of the popular vote, came off with only one-ninth of the seats With this experience in mind, the parties of the Left, operating as a *Cartel des Gauches*, at the next election—in 1924—pursued the same tactics, with similar results. To such an absurdity did political manipulation thus reduce the system that even the most ardent proportional-representationists were forced to the conclusion that it would be best to sweep it away altogether and make a fresh start. The parties of the Right would have been glad to see an out-and-out plan of proportional representation substituted forthwith. The Left, however, which, like the British Labor party, had once favored the system but had now changed its mind, blocked every effort in that direction, and in 1927 the *arrondissement*, with a single deputy, once more became, in a general way, the electoral area, although with provision for combining *arrondissements* with fewer than 40,000 inhabitants and dividing others with more than 100,000; so that the system may more accurately be referred to as *scrutin uninominal* than as *scrutin d'arrondissement*. In later years, the battle of the *majoritaires* and *proportionnalistes* went merrily on, without any positive result; and in the meantime the existing constituencies—shamelessly gerrymandered and for other reasons far from equal at the outset—grew so decidedly unequal, despite feeble reapportionments, that in 1936 they varied all the way from 22,000 to 133,000 in population, with an average of about 70,000.[1]

[1] For an English version of the law of 1919, see H L. McBain and L Rogers, *The New Constitutions of Europe*, 546–549, and for comment on it, *Representation* (published by the [English] Proportional Representation Society), Oct, 1919, pp. 10–16. The text of the electoral law of 1927 is reprinted in *Rev. du Droit Pub et de*

PERSONNEL OF THE CHAMBER

So much for the electoral system. What of the results? What sorts of people find their way into the Chamber, and how satisfactory is it as a representative body? To begin with, the general run of the membership is bourgeois, or middle-class. Few members come from families allied with the old nobility; few are large landowners or persons of note in the world of commerce and industry. On the other hand, few—at all events, prior to Communist successes in the elections of 1936—have ever performed manual labor, on farm or in factory. The great majority are "self-made" men who have achieved at least some local distinction in the professions. They are lawyers, journalists, physicians, bankers, school-teachers, former civil servants, with of course a good many professional politicians. Lawyers are not quite so much in evidence as in the average American legislature, yet far more so than in the British House of Commons; indeed, they always form the largest occupational group; after the election of 1932, there were 250 of them in a membership of 615.[1] Naturally, the great majority of deputies have been active locally as members of party committees or as party workers of other sorts; and an astonishing proportion not only have been members of departmental or communal councils, but continue to be such while serving their constituencies at Paris—for not only is there no legal incompatibility between the two functions, but the dual relationship is a regular, and in some respects an advantageous, feature of the system.[2] All in all, the Chamber is, as Lord Bryce once pointed out, neither aristocratic nor plutocratic; it contains no small amount of talent, being notably

la Sci. Polit., July–Sept., 1927, pp. 506 ff., and the more important parts, in English translation, in W. E. Rappard *et al.*, *Source Book*, Pt. II, 35–37. A valuable account of French suffrage and elections is C. Seymour and D. F. Frary, *How the World Votes*, I, Chaps. xv–xviii. Fuller treatments of the subject include A. Tecklenburg, *Die Entwickelung des Wahlrechts in Frankreich seit 1789* (Tübingen, 1911), and P. Meuriot, *La population et les lois électorales en France de 1789 à nos jours* (Paris, 1917). Cf. S. Kent, *Electoral Procedure under Louis Philippe* (New Haven, 1937), and, on suffrage matters, B. Lavergne, *Le gouvernement des démocraties modernes*, 2 vols. (Paris, 1935). It may be added that in 1937 the Chamber's *Commission du Suffrage Universal* (a committee charged with electoral matters) went on record, by a vote of 35 to one, in favor of proportional representation, and that in March, 1939, the Chamber of Deputies approved, 425 to 158, an article of a proposed new electoral law providing for a party-list proportional system.

[1] As compared with 63 farmers and "agricultural engineers," 46 manufacturers, 42 physicians, 35 publicists, 32 professors and honorary professors, 27 former civil servants, 19 mechanical and civil engineers, 15 journalists and men of letters, 12 landlords, etc.

[2] For example, among the 615 deputies elected in 1932, there were more than 200 mayors of communes and nearly as many departmental and communal councillors. W. R. Sharp, *The Government of the French Republic*, 70.

department capital and consisting of (1) the department's representatives in the Chamber of Deputies, (2) the members of the department's elective general council, (3) the members of all *arrondissement* councils within the department, and (4) one delegate from each communal council in the department.[1]

The 75 members named by the National Assembly before it passed out of existence were to sit as senators for the rest of their lives, vacancies being filled, with similar tenure, by the Senate itself as they arose. A good deal was made of the point that this cooptative group of members would provide a continuous, steadying element, beyond the reach of fluctuating public opinion, and that the arrangement would open an easy way for the Senate to avail itself of the services of men of distinction in law, letters, science, industry, and commerce who might not otherwise seek or attain election. The main impetus behind the plan, however, was the desire of the monarchists to pack the Senate from the outset with persons of their own persuasion and thereby to ease the way for scuttling the republic when the time should become ripe. This latter objective proved illusory. Rather than permit Orleanists to be chosen, the Legitimists threw their strength to republican candidates, with the result that of the first quota of 75 elected, only 18 were monarchists of any stripe.

LATER CHANGES

A few years of experience brought about some changes. First of all, a constitutional amendment of 1884 lifted the first seven articles of the law of 1875 out of the constitution, leaving only four articles remaining; and since that time all arrangements as to numbers, mode of election, apportionment, qualifications, term, and removals have rested on the basis of statute only. Next, Parliament enacted, in the same year, that while senators then on a basis of life tenure should be allowed to serve out their days, all seats thenceforth falling vacant should be allotted to the departments to be filled in the regular manner. The last surviving life member died in 1918, and since that time all senators have owed their seats to election by the departmental colleges. By 1884, too, dissatisfaction on the part of the more liberal and radical political elements with an arrangement under which each commune as such, irrespective of its population, had only one vote in the departmental electoral college rose to a point where a change could be forced; and the law just mentioned broadened the membership of the body to include, not simply one delegate from each commune, but any number up to 24 (30 in the case of Paris), according to the number

[1] On this system of local councils, see pp. 588–593 below.

of inhabitants.[1] This change gave the Senate a new slant toward liberalism by allotting more electoral power to the urban populations. It stopped short, however, of giving them power in proportion to numbers, for while a great city could have only 24 representatives in the electoral college of the department in which it was situated, a city of as few as 60,000 could have the same number, and every one of the towns and villages in the department (often dozens of them), even with populations of only 50 or 100, remained entitled to at least one.[2] To this day, the senatorial electoral system has continued in this way to favor the more cautious and conservative elements in politics—perhaps most definitely the bourgeoisie of the smaller and medium-sized towns. Even yet, although not to the degree originally intended, the Senate is, in the words of Gambetta, "the great council of the communes."

Nowadays, the Senate consists of 314 persons[3] (a little more than half the number in the Chamber of Deputies); and, except for three sitting for Algeria and four for the colonies, all are elected on the same basis in the 89 departments. The term is long, *i.e.*, nine years, but with arrangement for overlapping so that one-third of the seats fall vacant every three years, as happens every two years in the Senate of the United States. Qualifications for election are the same as for deputies except that the minimum age is 40 instead of 25.

CANDIDACIES AND ELECTIONS

Senatorial deputations from the departments (numbering as a rule from two to five, but 10 in the department of the Seine, containing Paris) are renewed integrally; that is to say, all senators from a given department are elected at the same time, and, except for filling vacancies, each department has a senatorial election only once in nine years. One group of departments elects in 1938, a second in 1941, and a third in 1944. Candidates are announced by themselves or by agents or supporters; and while there is no requirement of residence in the department, those who win are almost invariably local men who have gained experience and prominence as mayors, members of the department council, deputies in the Chamber at Paris, or some similar capacity. Elections are held in the department capital and

[1] For an English translation of this law, see H. L. McBain and L. Rogers, *New Constitutions of Europe*, 541–545. It may be added that in Paris the 80 members of the municipal council are also electors, since they are included in the membership of the general council of the Department of the Seine.

[2] Thus, Marseilles, with 900,000 inhabitants, has 24 delegates, and the remainder of the department in which it is situated, with a population of but 250,000, has 313.

[3] This number comes about through the allotment of 14 senatorial seats in 1919 to three departments—Moselle, Bas-Rhin, and Haut-Rhin—created from the retroceded territory of Alsace-Lorraine.

follow a procedure under which a majority is required on the first two ballots, but thereafter only a plurality.

AN ABLE AND STRONG SECOND CHAMBER

Observers agree that the Senate is a vigorous, capable, and useful legislative body; certainly no second chamber elsewhere equals it in power except the American Senate and the Japanese House of Peers. It originates a good deal of important legislation; it exercises its function of revision with much deliberation and independence; it sometimes delays, amends, or defeats great measures upon which both ministers and Chamber are agreed; and, as we have seen, it has repeatedly driven ministries from office. Much of the time, to be sure, it yields substantial precedence to the Chamber. As an indirectly elected body, its claim to represent public opinion is less convincing; and it usually exercises a fine sense of discrimination in deciding when to stand firm and when to give way. But it is certainly not one of the mere auxiliary and secondary legislative chambers in which Continental Europe has abounded since the World War.

Furthermore, it is not only powerful; it is able. Forty years ago, ex-President Lowell described it as "composed of as impressive a body of men as can be found in any legislative body in the world,"[1] and in 1921 Lord Bryce expressed the opinion that "no other legislative body has in modern times shown a higher average standard of knowledge and ability among its members."[2] Recruited from the substantial elements of the country's population—from people who as a rule have risen to eminence in their home localities, have had experience in public office, are well educated, and have landed or other propertied interests, including many men of distinction in letters and science—it is admittedly superior in personnel to the Chamber of Deputies, with its large proportion of country lawyers, schoolteachers, and other people of circumscribed horizons and limited experience with large affairs. Long terms and numerous reelections give further opportunity for growth in knowledge, experience, and influence. A main reason, indeed, for the high quality of the Senate is the steady drawing off into its ranks of the abler and more experienced members of the Chamber. Hardly a deputy does not aspire to round out his career by going to the Senate, and so frequently is the ambition realized, especially by the more vigorous and astute, that in 1930, for example, no fewer than 95 of the senators—almost a third of the total number—had once been members of the other house. What the Senate gains, the Chamber loses; as abler and

[1] *Governments and Parties in Continental Europe*, I, 22.
[2] *Modern Democracies*, I, 238

maturer deputies migrate, their places are of necessity taken by younger, less experienced, and often less capable men. The deputies have the advantage of coming directly and more freshly from the people; and in a democracy this cannot fail to mean a good deal. But, by and large, the senators can more than match them in prestige, in familiarity with affairs, and in parliamentary skill acquired in a school of experience whose preparatory department is, for many, the Chamber itself.[1]

A LESS CONSERVATIVE BODY THAN INTENDED

Composed of persons at least 40 years of age (the average is usually quite a little beyond 60), and drawn from what may, even in France, be termed the "governing classes," the Senate is traditionally averse to sudden innovations and sweeping changes. Nevertheless, it is by no means as conservative as originally expected and by some intended. Gambetta and other republican leaders accepted it grudgingly in 1875, and for a quarter of a century the Radical party which they founded consistently advocated abolishing it. Less reactionary, however, from the outset than was anticipated, the chamber gradually grew more liberal;[2] and although, as a group of older men with considerable vested interests, it earlier incurred much criticism because of its slowness to assent to income taxes, old age pensions, shorter hours for industrial workers, and other progressive legislation, it has on some occasions proved quite as liberal-minded as the Chamber itself—for example, when, in 1936, it promptly and freely joined with that body in establishing a 40-hour week in industry, validating collective wage contracts, and raising the school age, in line with the policies of the Blum Popular Front government. Indeed, a competent writer voices the opinion that the Senate has been even more liberal than the Chamber right along since 1924[3]—although this would seem to be putting the matter somewhat too strongly.

FURTHER PROPOSED CHANGES

At all events, the existing set-up strikes many people as removing the Senate too far from popular control, not only because the members are elected indirectly, but also because they are chosen by electoral colleges many of whose members may themselves have been elected as much as three or four years previously, and because, once chosen,

[1] It is to be remembered, too, that among the senators will be found a very impressive number of ex-ministers, including ex-premiers—men who know the problems and difficulties of government at first hand.

[2] The broadening of the electoral base in 1884, together with the gradual disappearance of life memberships after that date, contributed to this development.

[3] H Tiner, *Theory and Practice of Modern Government*, I, 693.

they are ensconced in their seats for nine long years. One will not be surprised, therefore, to learn that a shorter term has been advocated, nor that there has at times been a good deal of sentiment in favor of the same sort of change that was made in the United States in 1913 when the election of senators was transferred from the state legislatures to the people. More radical elements, notably the Socialists and Communists would, indeed, like to see the Senate discarded altogether. A resolution in favor of direct election passed the Chamber of Deputies in 1884, although it was dropped when the decision was reached to allow life memberships to lapse as they fell vacant Twelve years later, a brilliant debate took place in the Chamber on two proposed constitutional amendments, one looking to direct election and the other to a further popularization of the electoral colleges. The second was adopted. But the Senate refused to concur. The discussion has since gone on intermittently, although with no tangible results, partly because the Senate itself has little desire to be "reformed," partly because advocates of change have shown no capacity for coming together on a definite program, and perhaps fundamentally because there has not been sufficient pressure from the country. Among interesting proposals heard is that the body be reconstructed, in whole or in part, on the principle of representation of economic interests or groups, a plan which, as we have seen, has been advocated as a basis for second-chamber reform in Great Britain. But no steps of the kind—nor indeed of any other nature—are at present in prospect.[1]

[1] Good general accounts of the Senate include E M Sait, *Government and Politics of France*, Chap v, Lord Bryce, *Modern Democracies*, I, 231–239, A Esmein *Eléments de droit constitutionnel* (8th ed.), II, 370–391. The principal treatise is G. Coste, *Rôle législatif et politique du Sénat sous la troisième république* (Montpellier, 1913).

CHAPTER XXVI

Parliamentary Government and Its Problems

RECALLING vividly the perils to which it had itself been subjected in Paris during the bloody days of the Commune, the National Assembly wrote into the constitution of 1875 a clause making the old royal palace at Versailles the meeting place of the chambers and the headquarters of the executive branch of the government as well. Within a few years, however, danger of further disorder disappeared, and in 1879 a constitutional amendment cleared the way for an immediate transfer of the seat of government back to its logical place in the metropolis. The president took up his residence in the Palais de l'Élysée; the Chamber of Deputies moved into the Palais Bourbon, and the Senate fell heir to the Palais du Luxembourg. Dating from the eighteenth century, the Palais Bourbon is located conspicuously at the end of the Boulevard St. Germain, in the neighborhood of a group of administrative buildings and directly across the Seine from the spacious and historic Place de la Concorde. The building is huge and rambling, but even so, its principal chamber, committee rooms, and other facilities—and especially its ventilation and lighting—are far from adequate for a legislative body of 618 members. Situated upwards of a mile away, in the general vicinity of the Sorbonne and the Panthéon, the still older Palais du Luxembourg provides the Senate with commodious, and indeed luxurious, quarters.[1]

THE PHYSICAL SETTING

SESSIONS

The constitution requires that the two houses meet on the second Tuesday of January of each year (unless convened at an earlier date by the president of the Republic), and that every year they sit for a total of not less than five months. In countries under dictatorship, parliament is convoked but seldom, and is apt to be in session only a day or two at a time. In Japan, too, parliamentary sessions are notoriously brief. Where popular government prevails, however, things are done differently, and in point of fact the French Parliament has two protracted ses-

[1] The French Parliament affords one of the very few instances in which the two branches of a national legislature are not housed under the same roof.

sions a year, the first, termed the "ordinary" session, extending from January to about the middle of July, and the second, considered as a *session extraordinaire*, and devoted chiefly to consideration of the budget, running through most of November and December—a schedule, it will be observed, not very different from that of the British Parliament. Other special sessions besides the budget session may be called by the president of the Republic, either on advice of the ministers or on concurrent request of absolute majorities in the two houses. Such additional sessions, however, are very rarely needed, and in fact have never been petitioned for by the members. The usual right to suspend proceedings by adjournment, *e.g.*, over holidays, exists; and the executive may order adjournments, although never for longer than one month at a time, and not to exceed twice during a session.[1] Sessions, in all cases, are terminated by executive act. Constitutionally, the executive has power, as in Great Britain, to dissolve the lower chamber and thus bring a parliament to an end. Not only, however, is it necessary in France to secure the consent of the upper chamber, but, as has been pointed out, the single dissolution that has taken place—at the time of the famous *Seize Mai* crisis of 1877—stirred so much feeling that no other has ever been attempted. In England, bills pending at the close of a session die and can be revived only by being reintroduced. In France, their status is not affected by termination of a session; and government (as distinguished from private members') bills carry over even from one parliament to another.[2]

PUBLICITY OF PROCEEDINGS

Only slowly and grudgingly did the English Parliament accept the principle that the general public has a right to hear its debates and to read them in authorized printed reports. Since 1789, full parliamentary publicity has, however, repeatedly been proclaimed in France as an essential guarantee of political liberty; and the constitution of 1875 stipulates that sittings of the chambers shall be public, even though either house may close its doors by majority vote—on proposal of five members in the Senate and 50 in the Chamber.[3] Normally, spectators are admitted by card, as long as there are vacant seats in the galleries; and verbatim reports of proceedings are published and distributed by a government printing establishment substantially as

[1] In point of fact, only two adjournments have been decreed by the executive since 1875—one in 1877 and another in 1934

[2] In the United States, bills survive from one session to another in the same Congress, but expire when a Congress comes to an end

[3] In no instance was this done until necessitated by military exigencies during the World War.

in Great Britain and the United States. The publication most closely corresponding to the American *Congressional Record* is the *Journal Officiel*.[1]

STATUS AND PAY OF MEMBERS

As in other countries, each house is judge of the qualifications of its own members, and each has unlimited control over the retention by a member of his seat during the full period for which he has been chosen. If a member wishes to resign, he can do so by obtaining permission of the chamber to which he belongs, without resorting to any subterfuge like that employed in Great Britain; if he loses his civil rights, or otherwise becomes disqualified, it is for the chamber in which he sits to say whether and when he must retire; and it may expel him for reasons that seem sufficient, regardless of his formal qualifications. A deputy who accepts a salaried national office—apart from ministerial posts and under-secretaryships—automatically vacates his seat, although he may be reelected if the office is among those regarded as not incompatible with membership. No rule of the kind applies in the case of senators. With a view to protecting freedom of debate and of decision in the chambers, both senators and deputies are guaranteed against legal liability for opinions expressed or votes cast in the performance of their duties. Moreover, they may not, except with consent of the chamber to which they belong, be prosecuted or arrested for any misdemeanor or crime unless caught in the act, and even then the chamber concerned is entitled to demand suspension of prosecution for the full period of the parliament.

Among other then rather novel ideas, the Revolution of 1789 introduced that of paying members of legislative bodies salaries out of the public treasury. The constitution of the Third Republic says nothing on the subject, but laws dating from the same period established the principle that senators and deputies should be paid equally, and fixed the amount at 9,000 francs a year. From this modest figure the stipend has risen to 62,000 francs, with a supplementary allowance of 15,000 francs for secretarial help, together with such perquisites as the franking privilege and free transportation on the railroads. Even so, the pay is small in comparison with that of senators and representatives in the United States—about $1,425, at the present rate of exchange, as compared with $10,000. Living in Paris is more expensive than in the provinces, and most members, not being men of means, are obliged to exercise rigorous frugality.

At the opening of every ordinary session, whether or not of a new

[1] For the various forms in which the proceedings of the Chamber of Deputies are issued, see E. M. Sait, *Government and Politics of France*, 195, note.

parliament, each chamber elects by ballot, and from its own membership, the staff of officers that will have charge of its affairs during the ensuing year. In the Chamber, this "bureau" consists of a president, six vice-presidents, 12 secretaries, and three quaestors, in the Senate, the same arrangement holds except that there is only one vice-president. Certain minor duties devolving upon the bureau are performed by these officers collectively, *e.g.*, appointing stenographers, clerks, doorkeepers, and other paid employees. In the main, however, each group has its own special tasks, one of the vice-presidents taking the chair when the president is absent, the secretaries supervising stenographic reports and counting votes, the quaestors looking after accounts, payment of salaries, archives, libraries, admission to the galleries, and the like.

OFFICERS:

As would be expected, the president is, in each chamber, by all odds the most important official. Indeed, the Senate's presiding officer ranks next to the president of the Republic, and the Chamber's follows immediately after. Both are usually the first men to be called to the Élysée for advice when a new ministry is to be made up. As defined partly by law and partly by the rules of procedure, the duties and powers of the two officials are substantially the same—recognizing members who desire to speak, interpreting the rules (subject to appeal from the chair), putting questions to a vote, announcing the results, signing records of proceedings, receiving memorials and other communications addressed to the chamber, and representing it in its dealings with the other chamber and with the executive authorities. In particular, the president is charged with maintaining parliamentary decorum, and while in the Senate, where debates are carried on in an exceptionally tranquil atmosphere, this entails no great burden, in the Chamber, where passions run high, the president's courage and tact are often tested severely. If when dispute is waxing hot the chair can intervene with a judicious observation, or perhaps a *bon mot*, he may be able to restore a semblance of calm. Failing this, he may get results by rapping sharply with his paper-knife on the edge of his desk, or by ringing a hand-bell. As a last resort, he may exercise his terrifying *droit de chapeau*—that is to say, he may put on his hat!—as a warning that unless order is restored he will suspend the sitting; and plenty of times such suspensions become necessary as a means of bringing back excited and unruly members to a frame of mind enabling business to proceed. As for himself, the president is not expected to maintain the completely non-partisan attitude of the

THE PRESIDENT

British speaker. Not so long ago, he was seen descending from the chair and giving the Chamber the benefit of his views on any issue on which he cared to speak. So far as the rules go, he might still do this. Under recent custom, however, he commonly refrains, not only from debate but from voting, even in the case of a tie, and about the worst that can now be said is that he is still sometimes prone to wield the power of recognition and of interpreting the rules with thinly veiled partiality toward the *bloc* that elected him. On the whole, he is still considerably nearer the American than the British speaker—both in his partisan bearing and in his less absolute power. Extended parliamentary experience, knowledge of the rules, a vigorous physique, keen powers of observation, unfailing intuition in matters of mass psychology—these are qualities which he almost necessarily must possess. Small wonder that the complaint is heard that few members are good presidential timber! Small wonder, too, that, a suitable man once found, he is likely to be reëlected over and over, even after the combination that first placed him in office has dissolved or passed from power! Bouisson was elected president of the Chamber 20 times and Deschanel 15.

THE COMMITTEE SYSTEM:

Both Chamber and Senate make extensive use of committees; indeed, the power and importance of committees is one of the distinguishing features of the French parliamentary system. From as far back as the revolutionary assemblies of the late eighteenth century, there were scattered precedents for large standing committees. The favored device in the legislative bodies of later times, however, and the one which the National Assembly of 1871–76 itself employed, was the smaller special committee, set up for only so long as was requisite for considering a single bill or other matter referred to it. When the new chambers organized in 1876, they weighed carefully the relative advantages of standing and special committee systems, and both decided overwhelmingly for the special type, save only in the domain of finance, where it was thought best by the Chamber to have a standing budget committee and by the Senate to have a similar committee on finance. The method adopted for making up special committees was also inherited from parliamentary bodies of the past, not excluding even the Estates General. Following the French tradition, each branch of the legislature provided in its rules for dividing its membership afresh each month, and by lot, into a certain number of *bureaux*, or sections—11 in the Chamber and nine in the Senate; and, a measure which it was desired to refer having been sent to all of the bureaus in a given chamber, each of these, after preliminary

1. EARLIER COMMITTEES AND THEIR SHORTCOMINGS

discussion,' was to designate one of its number (occasionally two, when the matter was exceptionally important) to join with similar representatives of the other bureaus in forming a special committee for considering and reporting the bill. Committees made up on a basis so mechanical proved, however, in the long run, not very satisfactory. To begin with, there could be no guarantee against one committee being surfeited with talent and another barren of it, or a committee being so constituted as to have no interest in the matter referred to it, or minorities being totally unrepresented or on the other hand over-represented and unduly dominant. Matters requiring reference became so numerous, too, that bewildering numbers of committees had to be set up. This was to a degree remedied by introducing the practice of referring, not a single measure as originally designed, but several, to the same committee, although this often meant to prolong the life of a committee far beyond that of the bureaus from which its members were drawn. But the most serious aspect was that, being made up on a basis of bureaus whose composition was a matter of pure chance, the committees did not, except by rare luck, reflect the party situation in the Chamber or provide groups which could be relied upon to give sympathetic consideration to proposals coming from the government. A ministry of progressive bent, although commanding a working majority in the Chamber, might find its bills emasculated by committees dominated, under the purely mechanical method by which they were made up, by ultraconservatives. Legislation was delayed, ministerial instability increased, responsible government weakened. The situation was bad enough in the Senate; in the Chamber, it became intolerable.

2. THE CHANGE TO STANDING ELECTIVE COMMITTEES

The remedy that seemed obvious to anyone familiar with American committee procedure was to cut the committees loose from the purely artificial bureaus and designate their members by some method that would enable them to mirror the political situation in the respective chambers at any given time. And to this solution both branches of Parliament came, belatedly but inevitably. Some familiarity having already been gained—through the budget committee, and even through special committees enjoying a prolonged life—with committees lasting as long as a year and handling groups of measures relating to some general subject, the Chamber of Deputies started in 1882 [1] the systematic establishment of standing

[1] The same year, by curious coincidence, in which the first standing committees were created in the British House of Commons See pp. 214–215.

committees, whose number by 1902 rose to 16, each composed of 33 members named for the duration of a parliament. As yet, the members were designated by the bureaus, three from each. But in 1910 they were made elective by the Chamber as a whole, with the number raised to 44 on each committee. According to the new rule, they were to be chosen under a list system, with proportional representation; in practice, this soon came to mean that the Chamber first decided how many members each parliamentary group should have on each committee,[1] the groups then selecting their respective representatives, and the Chamber completing the process by ratifying the "slate." Development in the Senate took a similar course, and in 1921 practically the same plan of committee selection was installed there, although rather because of a feeling that the system ought to be the same in the two houses than because of any genuine enthusiasm for the reform.[2]

3. PROS AND CONS OF A STANDING COMMITTEE SYSTEM

In both houses, the standing committee system encountered plenty of opposition, on the ground that it would lead to narrowing specialization, that the committees would grow arrogant and independent, that the chambers would be resolved into a collection of miniature legislatures and their proceedings become prefunctory. In the United States, Woodrow Wilson had argued in his *Congressional Government* (published in 1885) that standing committees frustrated unity and leadership in Congress; and in Great Britain, such committees were not only feared for similar reasons when first established, but in later days have been charged, *e.g.*, by Professor Laski, with reducing parliamentary debate to a farce. In France, they clearly have been a factor—although hardly the main one—in keeping the cabinet relatively weak.[3] Doubtless, however, their advantages outweigh their disadvantages; and, at all events, adoption of them as a means of enabling parliaments to cope with the tasks devolving upon them in these later days was a practical necessity.

4. THE COMMITTEES OF TODAY

At the present time, the Chamber of Deputies has —in addition to varying numbers of sessional and special committees (including always a so-called "permanent" committee on rules and another on universal suffrage), 20 *grandes commissions permanentes*, or standing committees, of 44 members each (55 in the case of the Finance Com-

[1] On the group system, see pp. 542–544 below.

[2] The historical development of the French system of standing committees is treated at length in R. K. Gooch, *The French Parliamentary Committee System* (New York, 1935), Chap. iii.

[3] See pp 523–524 below.

mittee).[1] Like similar committees in the United States, but unlike four of the five in the British House of Commons, they are in all cases committees on particular subjects or fields of legislation, and one has only to glance at the list to observe a significant correlation between it and the list of government departments and services. Since 1920, they have been elected for a year at a time, though as a rule their personnel remains much the same throughout the four-year period of a parliament; and in Chamber and Senate alike, no person may belong to more than two "grand" committees at the same time.[2] In June of each year, the bureau of the Chamber allots the recognized groups—sometimes as many as a dozen in number—quotas of committee members determined in accordance with a formula designed to assure fair proportions.[3] In caucus, each group thereupon draws up its list of nominations, settling the matter by simple conference if it can, but otherwise taking a formal vote, and the resulting lists are published in the *Journal Officiel*. If at the end of three days a list has not been protested by as many as 50 members, it is regarded as elected, the Chamber itself actually voting only in event of a protest, and only upon the committee members protested. The method closely resembles that by which committee members are chosen in the American House of Representatives, although in that body the complete committee lists are always actually voted on. Selection of committees in the French Senate is substantially as in the Chamber. There are, however, only 11 standing committees (*commissions generales*);[4] the number of members is 36, the list of party groups to be represented is shorter than in the Chamber, a list may be challenged by as few as 20 members, election takes place at the beginning of each regular session instead of in June, and for the selection of all special committees the bureaus are still used. As for the bureaus in the Chamber (the Senate, too, except as noted), they have little to

[1] The list is as follows: 1, General, Departmental, and Communal Administration, 2, Foreign Affairs, 3, Agriculture, 4, Algeria, Colonies, and Protectorates, 5, Alsace-Lorraine, 6, Army, 7, Social Insurance and Welfare, 8, Commerce and Industry, 9, Accounts and Economies, 10, Customs and Commercial Agreements, 11, Public Instruction and Fine Arts, 12, Finance, 13, Public Health, 14, Civil and Criminal Jurisdiction, 15, Merchant Marine, 16, Navy, 17, Mines and Motive Power, 18, Aviation, 19, Labor, 20, Public Works and Communications.

[2] Indeed to only *one* in the case of the finance and foreign affairs committees

[3] Until 1932, provision was made for separate committee representation for deputies not identified with any group, but the plan was then abandoned See p. 543 below.

[4] As follows 1, Army, 2, Navy, 3, Foreign Affairs and Protectorates, 4, Customs Duties and Commercial Agreements, 5, Public Works, 6, Agriculture, 7, Public Instruction, 8, Public Health and Social Insurance, 9, Civil and Criminal Jurisdiction, 10, General, Departmental, and Communal Administration, 11, Commerce, Industry, Labor, and Posts, 12, Finance

do beyond examining the credentials of newly elected parliamentary members. In neither house is the old plan of monthly renewal adhered to, the Chamber now setting up its bureaus for the duration of a parliament and the Senate for that of a session.[1]

THE CHAMBERS AT WORK

The functions of Parliament are multifold, but they can be grouped under three main heads: (1) legislation, (2) raising and appropriating money, and (3) criticism of administrative acts and policies. An English writer of a generation ago made the point that on account of the thoroughness of French political reconstruction between 1789 and 1875, together with the comprehensiveness and durability of the Napoleonic codes, the field of legislation is narrower in France than in England and many other countries;[2] and a later observer was led to assert that the Chamber does not find in legislation its chief interest.[3] However this may be, the steadily widening scope of governmental activities in the past half-century, springing mainly from social and economic changes, has in France no less than in other countries laid an increasingly heavy burden upon the parliamentary bodies. Legislative proposals have increased both in number and in complexity; and though a surprisingly large part of the resulting new legislation takes the form of administrative *décrets* and *arrêtés*, the chambers not only devote much earnest study and discussion to the great issues of national policy, but put forth from year to year a very respectable quantity of new or amended law.

RULES OF PROCEDURE

No legislative body could thread its way through the maze of business that confronts the French chambers without an ample body of rules. American legislatures avoided the necessity of working out their procedures from the ground up by taking over those already developed by the British Parliament, and the French Senate and Chamber likewise appropriated to their use the rules of the National Assembly of 1848, adopting in both cases, in 1876, codes of regulations based on these earlier rules, and in the instance of the Senate adhering to a code thus contrived, with occasional modifications, to the present

[1] The committee system is described more fully in E M Sait, *Government and Politics of France*, 204–212, L. Rogers, "Parliamentary Commissions in France," *Pol. Sci. Quar*, Sept. and Dec., 1923, and R. K. Gooch, "The French Parliamentary Committee System," *Economica*, June, 1928. The leading treatises are R K Gooch, *The French Parliamentary Committee System*, cited above, J. Barthélemy, *Essai sur le travail parlementaire et le système des commissions* (Paris, 1934), and A. Breton, *Les commissions et la réforme de la procédure parlementaire* (Paris, 1922).

[2] J.E C Bodley, *France*, II, 213–216.

[3] Lord Bryce, *Modern Democracies*, I, 256.

day. The Chamber adopted a new code in 1915, which, in turn, was overhauled extensively in 1932. Like standing orders at Westminster, the rules in both houses carry over from one parliament to another, with few changes except such as are sometimes introduced when a new session opens.[1]

THE "ORDRE DU JOUR"

Originally, the order of business in the Chamber of Deputies was fixed by the presiding officers and submitted to the body for approval; and this is still the practice in the Senate. In 1911, however, the Chamber adopted a new plan under which the schedule of work is laid out for a week at a time by the key men, *i.e.*, the president and vice-presidents of the body, the chairmen of all standing committees, and the presidents of the various party groups, meeting as a *conférence des présidents*, with opportunity for the ministry to indicate its desires if it cares to do so; and the arrangement has proved more satisfactory than the old one.

GOVERNMENT BILLS AND PRIVATE MEMBERS' BILLS

The constitution confers the right to initiate legislation upon both the president of the Republic (in effect, the ministers) and the members of the two houses. Government bills, *i.e.*, bills backed by the ministry and signed by the president, are termed *projets de loi;* private members' bills, *propositions de loi.* The distinction, however, has no such significance as in Great Britain, where, as we have seen, it is a basic feature of the legislative process; nor again is there, in French procedure, any difference between the handling of public and of private bills. Government bills are nearly always introduced first in the Chamber of Deputies, and are usually accompanied by an *exposé des motifs* bringing both to the deputies and to the interested public a summary, frequently illuminating and convincing, of the considerations which have resulted in the decision of the ministry to ask enactment of the measure. Normally, government bills are prepared in one of the departments (sometimes with assistance in phrasing from the Council of State),[2] submitted to the ministry as a whole for approval, signed as a matter of form by the president of the Republic, and thereupon introduced by the department head. A minister or department may be the actual author. But in a great many cases government bills originate with a non-ministerial senator or deputy, who indeed might introduce his measure on his own responsibility, but who realizes that its chance of passage

[1] Cf R. K. Gooch, *op cit*, Chap i

[2] See p. 575 below.

is likely to be increased considerably if it comes to the chambers under government sponsorship. Ministers are thus continually bombarded with proposals for legislation in which private members seek to interest them; indeed, when the matter is one of general importance, a favorite plan is to offer a resolution in one of the houses formally requesting the ministry to draft and submit a *projet* relating to it. Frequently, of course, real authorship reaches back farther still—to some group or interest which has prodded the deputy or senator to action.[1]

Not only do private members thus instigate government bills far more frequently than in England, but they themselves introduce many more measures (bills, resolutions, amendments, and the like—prepared by the authors or by paid assistants), and under far fewer restrictions, than on the other side of the Channel. Such measures may be brought forward by a member single-handedly, or they may be sponsored by any number of deputies or senators, whose names must, however, in all cases be attached. The president of the Chamber will not permit a bill conflicting with the constitution to be considered; and a private member may not introduce a measure which has, within the preceding three months, been introduced and rejected. Otherwise, the way is open. The fact that in less than 13 months, in 1928–29, no fewer than 1,078 *propositions de loi ou de résolution* and 1,080 amendments came from private members in the Chamber of Deputies alone[2] indicates that, notwithstanding some tightening up of the rules, it remains true, as a committee investigating the subject in 1898 asserted, that "it is impossible to find a more marked contrast between two institutions than that presented by the [British] House of Commons and the Chamber of Deputies in the individual initiative of the latter and the ministerial initiative of the former."[3] Neither as to the introduction of bills and resolutions nor in other ways has the French back-bencher suffered any such eclipse as that which has overtaken the regimented private membership at Westminster. His position is far more like that of the American

[1] For an illuminating discussion of the origins and preparation of legislation, see W. R Sharp, *The Government of the French Republic*, 94–105. The passage includes an account of the National Economic Council, created by decree of the Herriot government in 1925.

[2] During the same period, 475 *projets* were introduced. A. Lefas, "La réforme des méthodes du travail parlementaire," *Rev. des Sci. Polit.*, Oct.–Dec., 1929, p. 511. Accuracy requires it to be noted, however, that the majority of bills actually passed—especially important ones—are originated, or at all events introduced, by the government.

[3] *Chambre des Députés, Documents Parlementaires*, 1898–99, p. 1492.

congressman. By the same token, the government dominates the scene much less completely, and more time is wasted in speech-making on proposals of doubtful worth.[1]

THE COMMITTEES AT WORK

Once introduced, a bill, whether a *projet* or a *proposition*, is normally referred forthwith, by the president of the chamber, to the appropriate "grand" committee. A given measure may, of course, be of interest to two or more committees, and for that contingency the French have the interesting plan of asking one of the number to assume primary jurisdiction, while the others may designate non-voting representatives to attend the chief committee's meetings and later give the Chamber the benefit of their own observations. For members who take their assignments seriously, committee work is heavy. Meetings are rarely less frequent than once a week, and often almost daily; sub-committees make additional demands; and although time for committee work is supposed to be safeguarded by holding no sittings of the chambers in the forenoons or usually on Wednesdays, one or more of the busier committees will be found grinding away at almost any time, even when the chambers themselves are in session. There has been much complaint of the failure of members to attend committee meetings regularly, and in the Chamber a rule fixing half of the membership as a quorum has been adopted as a stimulus. Six or eight genuinely interested members, however, will usually do better work than a larger group containing persons not interested or informed, and the situation in this regard appears not particularly serious. Contrary to practice in both Great Britain and the United States, each committee elects its own chairman and other officers; and chairmanships, carrying a good deal of prestige and power, are eagerly sought. Again, contrary to American usage, the sessions of committees are always closed to the general public—that very familiar American device, the public hearing, being quite unknown. To be sure, experts from the outside may be invited in; and the author of a private member's bill may attend in a consultative capacity, provided he is willing to retire whenever the committee votes. But not even ministers can gain entry unless a committee assents.[2]

[1] The explanation of these differences is to be found mainly, of course, in the nature of the respective party systems. The party solidarity of the normal British cabinet and its support in the House of Commons make for domination of the legislative scene at any given moment by "the government." Coalition governments in France, supported only by evanescent *blocs* in Parliament, enjoy no such preeminence. See pp. 542–544 below.

[2] In practice, ministers and other administrative officials spend a good deal of time in committee meetings.

THE FUNCTIONS OF "RAPPORTEURS"

Still more remarkable is the rôle played by the *rapporteur*, or reporter. In Great Britain, a government bill, after committee stage as well as before, is in direct charge of a minister, who explains it, defends it, and pilots it through to passage. In the American Congress, practically all bills are reported and managed by the chairmen of the committees which have originated them or to which they have been referred. In France, when a bill (whether *projet* or *proposition*) is taken up by a committee, the first step normally is to designate one of the members as reporter for that measure; and when deliberations are ended, it is that person—not the committee chairman, nor yet the minister in whose province the bill falls—who shoulders the main responsibility for securing action by the Chamber. Having prepared a printed report presenting the text of the bill as recast by the committee, the arguments supporting it, and sometimes (although not always) the views of the minority, he goes before the Chamber prepared to bear the brunt of the attack and to marshal and direct the defense. He may receive assistance from the committee chairman and, in the case of a government bill, from the minister chiefly concerned; but his remains the guiding hand. This curious twist by which an ordinary private member acquires precedence over committee chairman and minister alike has been criticized on the ground that it confuses functions and divides responsibility. The defense may be offered, however, that a *rapporteur*, being responsible usually for only one bill at a time, has a chance to concentrate his best effort upon it, and that, in practice the material prepared by him for the Chamber is frequently a model of exhaustiveness and lucidity.

RELATIONS OF COMMITTEES TO MINISTERIAL RESPONSIBILITY

The vigor and independence of the great committees in the two houses are indeed principal reasons—along with the party situation—for the weak parliamentary position occupied by the cabinet in France as compared with that of the British cabinet. Even in legislation, with which alone they originally were supposed to have to do, they recognize no obligation merely to rubber-stamp the government's proposals.[1] Though more accurately reflecting the balance of political forces in the chambers than did committees made up under the old system, they still bring many a government bill to eventual defeat. Furthermore, with equally dev-

[1] Like most American, but unlike British, standing committees, French committees are not limited by the principles of bills referred to them, not only may they amend such bills in any way they like, but they may report out substitute bills of their own devising.

astating results they have extended their control into the domain of administration. Comparing the list of "grand" committees in the Chamber with that of ministries, one finds, as suggested above, a striking correspondence; for nearly every government department there is a like-named committee, in one house if not both. Nor is the arrangement accidental. Parliament rightly considers the criticism and supervision of administration to be one of its major functions, and though the committees were not designed—certainly not more than incidentally—as arms or agencies for this purpose, they have become such in remarkable degree. Endowed with (or assuming) full powers of inquiry and investigation, they keep the executive departments under surveillance such as rarely is experienced in Great Britain. Sometimes the relations between particular committees and corresponding departments are amicable, and even cordial. More frequently, however, if not positively hostile, they at least are grounded upon mutual apprehension lest cooperation result in a surrender of prerogative. By and large, important committees like those on foreign affairs and finance are likely to control policy quite as much as do the responsible ministers, who dare not jeopardize their already precarious position before Parliament by defying or ignoring the committees. Thorny at best, the pathway of cabinets is unquestionably made harder by the unwillingness of vigilant, powerful, and often over-zealous committees to consult and cooperate. One of the strongest of French prime ministers, Poincaré, repeatedly criticized the power of the committees, which he considered a serious obstacle to the functioning of government; and more recently ex-Premier Léon Blum expressed similar views.[1]

WHAT HAPPENS AFTER COMMITTEE STAGE.

Sacred to parliamentary procedure in English-speaking countries is the well-known scheme of three readings. In France, however, there are normally in the Chamber of Deputies only two

[1] This phase of the situation is discussed at length in K. K. Gooch, *The French Parliamentary Committee System*, Chap. vii, and L. Rogers, "Parliamentary Commissions in France," *Polit. Sci. Quar.*, Dec., 1923, where there is also an account of the interest taken in Great Britain and other European countries in the French system of articulation of committees with ministries (cf. p. 216 above). The following summary of the ministers' position in relation to the chambers is worthy of being quoted: "In its [the cabinet's] relation to Parliament, it is both very weak and very strong. It has little control over the parliamentary time-table, it must make reasonable room for private members' bills, its policy is under the constant scrutiny and even correction of the parliamentary commissions, it is exposed at any time to dangerous interpellations. On the other hand, its control of a vast amount of patronage, its strict hold on the entire administrative machinery, and its power of establishing subordinate legislation by decree give the cabinet powers which would be quasi-autocratic were it not for the precariousness of its tenure." R. Soltau, in *Encyc. of the Soc. Sci.*, IX, 379.

readings, the first being merely the formality of introduction, the second taking place after a measure comes back from committee.

ARRANGEMENTS FOR DEBATE

Debate is influenced to no small extent by the physical arrangements under which it is carried on. The hall in which each body sits is semicircular, with as many seats and desks as there are members to be accommodated. In the front center stands, on a platform about ten feet high and reached by stairs on either side, the president's desk and chair; and immediately in front of this is the somewhat lower platform, or "tribune," which every member who desires to speak at any length is required to mount.[1] On either side of the tribune are stenographers, whose reports of the proceedings are printed each morning in the *Journal Officiel*. The first two rows of seats at the middle of the semicircle, facing the tribune, are reserved for ministers; farther to the president's left, these same two rows are kept for the use of members of committees whose bills are up for consideration; while behind are ranged the remaining members of the chamber, with the more radical groups to the left shading off into the more conservative ones to the right. Designed for a membership hardly half as large as that of today, the hall of the Chamber of Deputies is crowded and poorly ventilated, and business progresses amid bustle and confusion quite unknown in the better-equipped and more sedate Senate.

THE COURSE OF DEBATE

Committee stage on a bill having been passed, the printed *exposé* of the reporter, including the text of the measure as recommended, is distributed among the members of the Chamber, and when the point at which the bill has been placed on the legislative calendar is reached, debate begins. First of all, there is discussion bearing simply upon the nature and objects of the bill in general. At its close, the president puts the question of whether the Chamber desires to "pass to the articles," *i.e.*, take up the measure in detail, section by section. If the vote is in the negative, the bill is dead; indeed, if it is a private member's measure, it cannot be revived until after an interval of three months. If, however, the decision is favorable, consideration of the measure in detail proceeds. At this time, but not before, amendments are in order—both such as may be offered from the floor and such others as may previously have been filed with the committee. If need be, debate is suspended until the committee can

[1] Except for interpolated remarks from excited members, the American practice of speaking from the floor is almost unknown. In the House of Representatives at Washington, however, most speaking is done from a position at the front of the chamber.

consider new amendments, although sometimes the members are able to confer on the spot and verbally report their conclusions forthwith. In any event, a bill materially altered by amendments is likely to be sent back to committee for painstaking revision before final passage. Ministers and committee reporters are entitled to be recognized whenever they desire to speak; and not only ministers and under-secretaries who do not have seats in the Chamber, but other outsiders as well, especially administrative and financial experts, are—contrary to British and American practice—allowed, or even invited, to mount the tribune. The general run of members wishing to take part in debate indicate their desire by inscribing their names on lists kept by the secretaries, and the president recognizes members who request the floor in the order shown by the lists, except that he usually tries to let supporters and opponents of the pending measure be heard alternately.[1] The only noteworthy differences in Senate procedure are (1) that the general and detailed discussions of a bill are regarded as two readings, instead of stages or phases of a single reading as in the Chamber, and (2) that amendments are offered less freely from the floor, being as a rule submitted to the committee in time to be considered along with the general text of the bill.

LIMITATION OF DEBATE

On motion of any member, closure—in the form of the previous question[2]—may be applied in the Chamber of Deputies by majority vote, provided that a representative of the government is not at the time speaking or desirous of doing so, and provided further that at least two persons of opposing views have had a chance to speak on the matter in hand. Believing that even this rather strong rule needed stiffening, the Chamber in 1926 adopted a time-schedule according to which, while ministers might still speak as long as they liked, committee reporters and chairmen, authors of interpellations, and first signers of *propositions des lois* might hold the floor only one hour, authors of amendments half an hour, and all other persons (unless otherwise agreed) 15 minutes One will not be surprised to learn, however, that this scheme proved too rigid, and that allotment of time is once more left to the leaders in advance of debate. Like its American counterpart, the Senate dislikes restriction on discussion, and its rules provide for no general form of closure. Any senator (or minister) may, however, demand that a special procedure, *la procédure d'urgence*, be applied to a given measure, and if the majority agrees,

[1] Members are even allowed to speak by proxy, i.e., to write out a speech and entrust the delivery of it to some other person.

[2] See p. 223 above.

the final reading is dispensed with and the fate of the measure decided at the close of the general discussion.[1]

PARLIAMENTARY ORATORY

Debate in the Senate is earnest but urbane and dignified, and full galleries are rarely attracted. For entertainment, not to say excitement, the spectator goes rather to the Palais Bourbon, where, if the question be one of large interest, both benches and galleries are likely to be crowded. Debate in any legislative body has its dull stretches, but in the Chamber these are not numerous. Instead of the mere sparring that often proves so boresome at Westminster and Washington, there is clash of argument against argument, principle against principle, personality against personality[2]—merciless cut and thrust, and often rude jousts which grow rougher and rougher until by dint of persistent ringing of his bell the president succeeds in restoring calm. Hardly any parliamentary body in the world is more susceptible to the power of oratory. A brilliant speech brings even the deputy's political enemies to their feet, cheering a sonorous peroration as a work of art even though they will presently vote to kill the measure that inspired it.[3] Nor is there partiality to any particular style of oratorical effort. Both M. Poincaré and M. Briand were exceptionally effective as speakers from the tribune, yet it would be difficult to conceive of two men having less similar methods of appeal: Poincaré, always the lawyer, reserved, calculating, full of meticulously assembled information, fortified with armloads of documents; Briand, human, suave, negligent of books, and with no taste for statistics, but hypnotizing his hearers with the music of his voice and the mellow persuasiveness of his argument.

METHODS OF VOTING

Neither chamber uses the *viva voce* form of mass voting employed in Great Britain and America. "Rising" votes are taken in both, and in the Deputies there is also voting by show of hands. On all tax proposals, however, and in other cases where in the upper house 10 members, and in the lower 20, so demand, there must be a *scrutin public*, or "public vote." Most commonly, this involves neither a roll-call nor a dispersion of

[1] Various changes in the rules of the Chamber introduced in 1935 with a view to speeding up procedure are described in R. Guilhen, "La modification du règlement de la Chambre des Députés," *Rev. du Droit Pub. et de la Sci. Polit.*, Jan.–Mar., 1935.

[2] It would be wrong to leave the impression, however, that there is *never* mere sparring. The practice of interpellation (see pp. 528–530 below) at times lends itself to a good deal of it.

[3] There is little personal rancor, even among the bitterest political opponents. "Deputies," says Lord Bryce, "will abuse one another in the Chamber and forthwith fraternize in the corridors, profuse in compliments on one another's eloquence. The atmosphere is one of friendly *camaraderie*, which condemns acridity or vindictiveness" *Modern Democracies*, I, 259.

the members to division lobbies, but rather the passing of an urn up and down the rows of seats, in order that each member may drop in a white slip of paper (with his name on it) if he wishes to vote "Yes" or a blue slip if he wishes to vote "No." A deputy may authorize another member to drop in a slip for him, and it is not uncommon for all of the votes of a party group to be deposited by one person, however much the proceeding may look to the uninitiated like stuffing the ballot-box—or urn.[1] If on announcement of the result, a majority in the Senate or 50 in the Chamber so demand, the final and most solemn form of voting is brought into play—*scrutin public à la tribune*. In alphabetical order, the members file across the tribune, and as they mount the steps, their names are checked and a secretary hands them a small wooden ball. Individually, they deposit their white or blue cards in an urn and descend the other steps, returning the ball as they do so to another secretary, who completes the check. This takes time, but has the merit of requiring every member to cast his own ballot; and with voting thus limited to those actually present, the result may differ from that obtained by balloting from the floor. Since 1885, the names of deputies voting in a *scrutin public* have been permanently recorded and published.

QUESTIONING THE MINISTERS

Any member of either branch of Parliament is entitled to ask questions of the ministers. Sometimes a query is put orally and answered on the spot, the questioner being allowed 15 minutes in which to state his inquiry, the minister as much time as he wishes in which to reply, and the questioner five minutes more in which, if he desires, to make a rejoinder. Or, the question may be both submitted and answered in writing; hundreds, in fact, are so submitted every session, and the answers printed in the *Journal Officiel*. To either an oral or a written question, a minister may refuse to reply only on the ground that "reasons of state" make it unwise to do so. At all events, the incident passes with no general debate, and no vote.

INTERPELLATION

Such questions are a means, known to cabinet governments everywhere, of holding ministers accountable for administrative acts and policies. But French usage provides (in addition, of course, to budgetary control) another and far more effective means—one which, although defensible if em-

[1] Sometimes appearances are in accordance with the facts, since members may take it upon themselves to put in ballots for their absent colleagues without instructions, several perchance voting in the name of the same absentee—in which event the secretaries determine by lot which ballot is to be counted. Despite abuse, the system is defended by competent French authorities as yielding a broader and more representative verdict on a measure or motion than if the vote were confined to members actually present.

ployed with discretion, has proved liable to serious abuse. This is interpellation. An interpellation is also a demand upon the government for information. But, unlike an ordinary question, it constitutes an interruption of the regular order of business, and not only gives rise to debate but entails a vote on the question of returning to the regular order. Simple questions commonly relate to minor details of administration. Interpellations more often have to do (or at all events are supposed to) with matters of policy, and may come singly from individual members or in batches from a half-dozen or more who join forces for the purpose. The only point at which the government is protected against them is in connection with the annual budget. Presented invariably in writing, interpellations are read to the Chamber by the presiding officer,[1] who thereupon sends them to the appropriate minister if they relate specially to the affairs of a single department, or to the premier if, as is more frequently the case, they involve the policy of the government in general. The premier or other minister may refuse to "accept" the interpellation, again on the ground that a public answer would be incompatible with the national interest. Only a very plausible explanation of the kind, however, will satisfy the Chamber, and normally a date (some time within a month) will be fixed for a reply.[2] The time having arrived, the interpellating member or group reiterates and explains the pending question, the premier or other government spokesman makes his reply, and then, instead of the incident being closed as in the case of an ordinary question, a general debate ensues and, as indicated above, a vote is taken. By the time the discussion is over, several motions may be pending, among them certainly one to the effect that "the Chamber, having heard the explanation of the minister, pass [*i.e.*, return] to the order of the day," and very likely another expressing the hostile point of view of the questioner. If a motion of the first sort prevails, the government has weathered the storm: the Chamber resumes the regular order, and the ministers who have been under fire draw a deep breath and go about their business. If, however, the motion adopted is of the opposite tenor, the ministers have no alternative but to resign; and this is the normal method by which ministries are overthrown.[3]

ITS DUBIOUS EFFECTS

The French notion is that interpellation is a logical and necessary device for enabling Parlia-

[1] They are not unknown in the Senate, but are to be associated chiefly with the Chamber of Deputies, where their most undesirable features have developed.

[2] Under the rules of the Chamber, Fridays are set apart for the purpose, but the numbers are such that other days are encroached upon also.

[3] In most cases, the ministers insist upon a vote carrying a positive assertion of confidence in the government.

ment to check on every act of the government, and for preventing the rise of an irresponsible and dangerous bureaucracy. The English have not found it so; although it is only fair to add that in the field of administration the British Parliament's control falls considerably below the French ideal, or, for that matter, the English ideal also of a generation or two ago.[1] So long as employed in a sincere effort to obtain information from ministers (though simple questions ought to suffice for that), and in respect to matters of genuine importance, there undoubtedly is a good deal to be said for the practice. The difficulty is, however, that most commonly the object is not information, and frequently the matter inquired about is not important. Every ministry at Paris is at best in a vulnerable position because of its internal artificiality and the common laxness of party discipline—conditions which lay it open in peculiar degree to precisely the sort of attack that interpellation invites. Not only, therefore, does the practice consume an inordinate amount of time in the chambers,[2] but it becomes a favorite means of heckling the government and driving it from office, often for no reason at all except that ambitious and meddlesome deputies enjoy the discomfiture of their political opponents and perhaps hope themselves to turn up in a ministry if one is newly formed. Every Chamber, indeed, has its group of more or less professional *interpellateurs*, among whom was found, in his earlier career, no less a personage than M. Clemenceau. If not inherently a "vicious" institution, as ex-President Lowell long ago pronounced it, interpellation is certainly one of the most grossly abused.[3]

RELATIONS BETWEEN THE CHAMBERS IN LEGISLATION

Constitutionally, the two branches of Parliament are co-equals in legislation, except that money bills must first be introduced in, and passed by, the Chamber of Deputies. For a long time, there was controversy as to whether the Senate could with propriety amend money bills, but the matter has now been compromised, in practice, on the basis that while amendments may be proposed, the upper chamber will give way if the lower one refuses to accept them. Most bills of major importance make their first appearance at the Palais Bourbon. None, however, can become law

[1] See p. 256 above

[2] As a random example may be cited an interpellation of 1929 dealing with the policy of the Poincaré government toward Alsace and Lorraine, and lasting through nine sittings of the Chamber, virtually excluding other business from January 24 to February 9.

[3] Further interesting aspects of legislative procedure are brought out in W. R. Sharp, *The Government of the French Republic*, 116–126.

until agreed to in precisely the same form by both houses, and this raises the question of what happens when a measure passes the two bodies in somewhat different form. The answer, in a word, is that if the bill is one in which the government is interested, the minister chiefly concerned, passing back and forth between the chambers, seeks to iron out the difficulty by getting a surrender here and a concession there, and even, upon occasion, by threatening to resign unless one or both houses recede from positions that they have taken; while if the measure is sponsored only by a private member or group, the chambers may, if so disposed, seek agreement through the medium of conference committees analogous to the conference committees employed for a similar purpose in the American Congress.[1] The Senate's function has always been considered as primarily that of slowing up the legislative process when the suspicion exists that an impetuous Chamber has outrun public sentiment or otherwise acted unwisely. Its favorite method of doing this is not precipitate and violent clash, but rather inquiry, revision, inertia, and delay. Many an imposing measure coming over from the Palais Bourbon is artfully trimmed of its more ambitious and bizarre provisions; many a one is gravely referred to a committee and left to die; or if not that, at all events is not brought forth until the Chamber, having cooled off on the subject, is in a frame of mind to accept a more conservative bill. Sooner or later, the Senate will yield if public opinion grows sufficiently insistent. But, as noted above, on subjects like the taxation of incomes and inheritances, social insurance, labor legislation, public ownership, and woman suffrage, a vast amount of pressure is likely to be required.[2]

FINANCIAL LEGISLATION: THE BUDGET

Budgetary procedures the world over are growing more similar, and one will not be surprised to learn that those of France, borrowed in part from Great Britain, have much in common with the procedures of that country. Estimates of expenditure and revenue for a given fiscal year are assembled and integrated by the finance ministry, on the basis of figures and materials furnished by the various spending

[1] In a few instances, *e.g.*, a military service measure of 1899, government bills also have been referred to such committees. The Senate is represented on each occasion by a committee of 11, specially chosen for the purpose, the Chamber, either by the standing committee which handled the bill or by a special committee. A plan for joint sittings of the two houses at times of conflict has often been proposed, but never adopted.

[2] Two important works on the powers and activities of the Senate are J. Barthélemy, *Les résistances du Sénat* (Paris, 1913), and G. Coste, *Rôle législatif et politique du Sénat sous la troisième république* (Montpellier, 1913).

floor of the Chamber, first on general features, and afterwards on the articles, or items, one by one. Here matters continue to go otherwise than in Great Britain. Private members may introduce amendments of almost any nature, including proposals to increase outlays (except for salaries and pensions), subject only to the restrictions (and these merely since 1934), first, that such proposals shall come "within the context of the government budget bill or other government bills," and second, that, except when a surplus is in sight, the proposals shall be accompanied by plans for obtaining proportionate amounts of new or additional revenue,[1] and by accepting such proposals, the Chamber may force the ministry—already perhaps badly buffeted in the committee—into a position where it will have either to surrender or resign. If the matter be one of major importance, the outcome is likely to be a ministerial crisis. If, however, it be of less consequence, the executive will usually give way—most likely at the expense of the taxpayer. "The order of the day in France is that the budget, as prepared by the minister of finance, expands at every step, first when it goes through the finance committee of the Chamber of Deputies, and second when it is examined by the Chamber in public session."[2] Perhaps this is a penalty more or less inevitably entailed by the exceptionally protracted consideration given the annual budget by the legislature under French usage. We have seen that at Westminster the rules of the House of Commons allow a maximum of only 23 days for debate on the estimates of expenditure for a given year. At Paris, the budget proposals are in committee for months, and afterwards before the chambers for still other months; as a rule, the "extraordinary" autumn session, running to between two and three months, is devoted to the subject almost exclusively. Few items pass without discussion, both in committee and on the floor; no huge sums are voted, as at Westminster, without parliamentary scrutiny; and the work of the government comes in for a thorough airing, in the connection, *i.e.*, as related to appropriations, most fitting for the purpose.[3] Partly because, however, of the prolonged opportunity thus afforded, as well as because of the generally weaker position of the executive than in England, budgets as adopted frequently mount to higher levels than prudence justifies.[4]

[1] For the text of the rules on the subject, see W E Rappard *et al*, *Source Book*, Pt. II, 73

[2] P Valeur, in R L. Buell (ed), *op cit*, 422

[3] It will be recalled, however, that the device of interpellation cannot be employed in connection with budget debates

[4] French authorities who criticize the budget system usually advocate adoption of English methods, on the other hand, the English are often pitiless critics of their own system. Cf. p. 249 above, and see R K Gooch, *Source Book*, 199–211

THE BUDGET IN THE SENATE

Not infrequently, the *loi de finance*, as passed by the Chamber, fails to reach the Senate in time to be acted upon before the new fiscal year begins; and in such a case, "provisional twelfths" must be resorted to. In any event, the Senate does not tarry over the matter as does the Chamber. To be sure, the finance committee to which the *loi* is referred, and later the Senate itself, does not hesitate to introduce changes, sometimes upwards (although no new item may be inserted), more frequently downwards in an effort to undo the results of demagogic appeals for increased expenditure which an undisciplined Chamber has proved unable to resist. Such changes the Chamber may or may not be willing to accept. In case of deadlock, the Minister of Finance endeavors to smooth out the difficulty, occasionally with the aid of conference committees; and at last—although perhaps only after awkward delay, and with the Senate usually yielding [1]—the budget act is ready to be published in the *Journal Officiel* and promulgated from the Élysée.[2]

AUDITING OF ACCOUNTS

Parliamentary control over the national finances involves also a critical supervision of the spending of money and a detailed examination of accounts. The financial transactions of the executive departments are scrutinized, first of all, by an exalted and independent body known as the *Cour des Comptes*, or Court of Accounts, dating from 1807 and consisting of members appointed for life by the president of the Republic. Not counting clerical help, the Court's staff numbers upwards of 150. Its inquiries extend to all members and agents of the government who have to do with receiving or spending public money; it makes known all irregularities on which criminal prosecutions can be based; and once a year it submits to the president of the Republic a general report, which, in turn, becomes the basis of a

[1] Although displaying notable strength in other respects, the French Senate has quite failed to gain the power over financial legislation which, contrary to the intent of the framers of the constitution of the United States, makes the Senate at Washington almost, if not quite, as influential in this domain as is the House of Representatives.

[2] A special study of the Senate's relation to budgetary matters is F. Goguel, *Le rôle financiel du Sénat français* (Paris, 1938). An excellent account of French budgetary procedure of two decades ago, with comparison of other systems, will be found in R. Stourm, *Le budget*, trans by T. Plazinski as *The Budget* (New York, 1917). Later discussions include A. E. Buck, *The Budget in Governments of Today* (New York, 1934), Chaps v–ix, R. K Gooch, *The French Parliamentary Committee System*, Chap vi, and A. Esmein, *Éléments de droit constitutionnel* (8th ed.), II, 456–484. A standard work on French parliamentary procedure in general is E Pierre, *Traité de droit politique, électoral, et parlementaire*, 2 vols. (5th ed., Paris, 1929). See also documentary materials presented in W. E. Rappard *et al.*, *Source Book*, Pt. II, 66–73.

final report to Parliament. This report received, and action under it taken (if any seems necessary), the financial transactions of the year are formally endorsed and the record closed by a joint resolution of the Chamber and Senate.

PROBLEMS OF PARLIAMENTARY GOVERNMENT

All in all, the French Parliament deserves a good rating among the world's principal legislatures Its personnel compares favorably with that of the British House of Commons or the American Congress,[1] and its proceedings are as a rule on a high level. It would not be expected, however, that in this age of world-wide disparagement and criticism of legislative bodies the French chambers should go unscathed. In point of fact, they are the object of vigorous attack from many sides. At one extreme are the Communists, who, aiming at a dictatorship of the proletariat, would do away with the existing type of parliament and substitute some sort of a supreme soviet, on the Russian pattern. At the other extreme is the ultra-conservative *Ligue de l'Action Française*, demanding a "traditional, hereditary, anti-parliamentary, and decentralized monarchy."[2] There is also something of a Fascist movement. The strong attachment of most Frenchmen to the Republic leaves little chance for any of these destructive elements to have its way, yet the fact cannot be blinked that the nation's parliamentary system is not quite so deeply rooted as that of Great Britain and that, like even the latter, it sometimes is confronted with the necessity of defending its right to exist under the conditions of this modern age. Between the extremes mentioned stand many critics who believe in parliamentary government, yet would have existing arrangements changed considerably The Socialists and Communists would suppress the Senate, and the Radical-Socialists would continue it only if elected by a wider constituency and shorn of power ultimately to defeat the will of the Chamber. Proponents of functional, or professional, representation would do away with the existing geographical connections of senators and deputies and substitute electoral arrangements under which, as they believe, the sentiments and interests of the nation would be mirrored more faithfully.[3] Other groups look rather to reforms of procedure. Some would curb the power of the great committees, others would

[1] See p. 164 above.

[2] G Bourgin, J. Carrère, and A. Guérin, *Manuel des partis politiques en France* (Paris, 1928), 43 As a political organization, this League, however, was supposedly dissolved by government decree in 1936

[3] A. Mitwally, *La démocratie et la représentation des intérêts en France* (Paris, 1932)

introduce still more effective forms of closure; the Republican Federation would restrict the initiative now enjoyed by private members in finance legislation; many would put interpellation under more restraint.

A proposal of much interest on still a different line is that Parliament be reduced to a somewhat humbler rôle in the governmental system by substantially increasing the power and independence of the executive. In England, an oft-heard complaint is, as we have seen, that the cabinet has become a dictator and Parliament a rubber-stamp.[1] In France, both president and cabinet are comparatively weak, Parliament unquestionably dominant. Many consider that the country would be better off if the situation were reversed. Some look toward an independent executive of the American type. More would like to see the weapon of dissolution brought into effective use. Nearly all would be pleased if the executive could somehow be rescued from its present plight as a football of partisan politics.[2] Notwithstanding particularly lively agitation in 1934, however, there is still at the date of writing (1939) no prospect of early developments on any of these lines; for, after all, the small-scale producers, peasants, small employers, independent craftsmen, traders, and *rentiers* who form the backbone of the nation do not want strong government as long as weak government somehow manages to carry on without taxing them too much, and as long as the economic system shows no signs of actually breaking down.

[1] Cf pp 254–256 above.

[2] On these and other proposed improvements, see R K Gooch, "The Anti-Parliamentary Movement in France," *Amer. Polit. Sci Rev.*, Aug, 1927 Cf. criticism by Poincaré in "Les méthodes parlementaires," *L'Illustration*, Feb. 22, 1930, trans. and reprinted in N L. Hill and H. W. Stoke, *op. cit*, 317–323.

CHAPTER XXVII

Political Parties

THE English or American student who approaches the subject of French party politics must start by divesting himself of many preconceptions; for he is entering a world decidedly different from that which he has known—a world in which even the term "party" has meanings as yet unfamiliar to him. As an Englishman or an American, he is accustomed to see the voters of a country divided more or less evenly between two (or perhaps three) major parties, each strong enough to gain control of the government from time to time, and, having gained it, to hold it for a period of years. Each of the parties has continuous national and local organization, with officers, committees, treasuries, platforms, publications, and what not; and the parties in the legislature are identical with those among the people outside. Each at election time selects or endorses candidates and gives them all possible assistance in winning at the polls, and, after such candidates have been elected, each expects them to support loyally the principles and policies of the party as formulated by party conventions and leaders and in party caucuses. Whips keep the members in line in legislatures, and central offices, committees, and other agencies maintain morale and discipline among the rank and file throughout the country. The parties, furthermore, have existed for a long time—in some instances, for generations—and may be expected to endure for a good while to come. Though taking different attitudes on numerous matters of public concern, they usually do not hold views diametrically opposed, but merely diverging in degree or emphasis. On many subjects, large and small, there is apt to be no sharp clash; and on fundamentals such as the form, character, and general objectives of the government, there is likely to be no disagreement at all.

PARTIES IN THE ENGLISH-SPEAKING WORLD

For nearly all of these characteristics, there are no parallels in France. To begin with, instead of two or three significant parties, there are usually upwards of a dozen; the number at any given time depends quite a bit upon what the observer chooses to regard as a "party," and in any event does not long remain unchanged. Following from

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this, no one party ever gathers sufficient strength to command a majority in either branch of Parliament, or to form a ministry single-handedly; coalitions of at least three—often more—are invariably required. Such combinations are by their nature short-lived, and consequently often unable to pursue a program very far beyond its initial stages. Again, with only one or two exceptions, parties bear but little resemblance to those in English-speaking countries. Of nation-wide organization, there often is little—sometimes none at all—the bulk of deputies and senators being chosen by the constituencies less upon the strength of party labels than upon the individual records, backed by personal appeals and promises, of the candidates. Contrary, too, to the situation in English-speaking lands, there is sometimes complete and vehement disagreement on matters reaching to the very roots of the governmental system, including the perpetuation of republicanism itself. Finally, the pattern of parties in the truer sense is overlaid and criss-crossed with a network of ever-shifting parliamentary "groups," often called "parties" by courtesy, but frequently bearing little or no relation to the divisions (themselves nebulous enough) among the voters; in the Chamber of Deputies as it stood at the beginning of 1939, no fewer than 17 such *groupements* were officially recognized, all but six of the number having sprung into existence within the previous year and a half.

To be sure, the situation here described is by no means peculiar to France. Not so long ago, Continental European countries without exception had numerous parties; and although, under dictatorial rule, countries like Italy, Germany, and Russia now contain only a single party, the surviving democracies still have multi-party régimes—sometimes with separate sets of parties maintained, respectively, by different racial elements. In the majority of cases, however (notably in Switzerland and the Scandinavian countries), parties have more of a nation-wide basis, and considerably more organization and stability, than those of France; and the latter country's situation may be regarded as farther removed from the order of things in the English-speaking world than that of any other state, except of course the one-party states. The opinion may be hazarded that the party system is the most difficult phase of French public life for an Englishman or American to understand.

SOME REASONS FOR THE MULTIPLICITY OF FRENCH PARTIES

When one turns to inquire into the reasons for things being as they are in France, a fully satisfying explanation is not readily forthcoming. On the one hand, it is not a matter of racial or linguistic divergences such as have operated to multiply parties in

various Central European states; for France, from these viewpoints, is exceptionally homogeneous. Nor is it, at least mainly, a matter of political immaturity. To be sure, ex-President Lowell, some decades ago, suggested that the French had not yet enjoyed self-government long enough to have learned the advantages of bi-partyism.[1] But the lapse of time since he wrote has seen parties increase rather than diminish in number; besides, one recalls that England, classic land of bi-partyism, came by the system, not as a result of long experience, but when parties themselves began, and without learning any "lesson" on the subject at all.[2]

Several contributing factors are, however, not difficult to discern. (2) The first is the power of theory in French politics. On occasion, the Frenchman can be as realistic and practical as anybody—for example, when called on to pay heavier taxes. But in his politics he tends to be theoretical; that is to say, having inherited or otherwise acquired a principle or an ideal, he holds out for it with a tenacity not so often encountered among Englishmen; and this makes it difficult for him to identify himself with a wide-sweeping political alignment which necessarily must be a product of compromise. Implicit in this devotion to abstract ideas is, of course, a high degree of individualism—manifest in every aspect of French life, but in none more than in politics. As an eminent Spaniard has remarked, politics is to the average Englishman or American a game, to be played normally by two opposing sides and—despite occasional appearances to the contrary, and even actual lapses—in a spirit of good humor and tolerance.[3] Taking for granted the necessity of cooperation, one willingly subordinates his own convictions and preferences to party decisions and discipline. In France, it is otherwise. The typical voter refuses to allow others to do his thinking for him, spurns the dictates of any group that presumes to try to control him, and rarely is found running with the pack. Politics is a battle (one may almost say a free-for-all fight), rather than a game.

But political *morcellement* in France is not merely a matter of (3) temperament. It is rooted also in history. Though the great bulk of Frenchmen are devoted to the republican régime, there are irreconcilables who still believe in, and would like to revive, monarchy. Prolonged and bitter struggle over the relations of church and state have left the nation divided into ardent Catholics, nominal Catholics, and anti-clericals (Catholic or otherwise); and politics perennially takes on much color from the "religious question" The rise of in-

[1] *Governments and Parties in Continental Europe*, I, 106

[2] See p. 20 above

[3] S de Madariaga, *Englishmen, Frenchmen, and Spaniards* (New York, 1928), 158–159

dustrialism has produced deep cleavages between capital and labor, reflected in the growth of socialism and trade unionism, and more recently of communism. Reaction against twentieth-century parliamentarism has found expression in varying forms of authoritarianism, associated chiefly with fascist programs. On many broad and fundamental issues, in short, individuals and groups assume the most varied and irreconcilable positions. Political disagreement is no mere matter of Right and Left; otherwise, we might look for a gradual shaking down of two opposing sets of political elements into two great parties. Clash of attitudes on all of the issues mentioned, besides many others, releases cross-currents of opinion that keep the scene perpetually agitated and frustrate nearly every tendency toward compromise and coagulation.

Still other causes of political pluralism and fluidity exist. One is the peculiarly close and personal relation of the deputy to his constituents, leading the former to assign to party ties a purely secondary importance, and certainly to have little regard for party discipline except when it happens to run on lines consistent with his supreme "ambassadorial" function and interest. Another factor, if one may judge by the experience of Great Britain with a reverse situation, is the disuse of the power of parliamentary dissolution. If a deputy belonging to a group momentarily supporting a coalition government knew that failure to heed orders from his leaders might have the result of putting him to the trouble and expense of running for reelection, he might think twice before casting a rebellious vote. As matters stand, he has little to lose by deserting his chiefs; it is they who, if matters come to the worst, will have to give way; the individual deputy may, indeed, profit from a reshuffling of the offices. As a final factor, one may mention the practice of interpellation, which, contributing as it does to the instability of ministries, adds generally to political confusion.[1]

SOME PRACTICAL EFFECTS OF IT

Whatever weight be assigned to particular causes, there can be no doubt about several significant effects of the party situation referred to. In the first place, the volatile, kaleidoscopic nature of party politics makes it more difficult, by and large, to ascertain public opinion upon a given matter than in a country like England or the United States, where, notwithstanding frequent blurring of issues, elections often result in clear-cut popular decisions on questions on which two, or at the most three, great parties have taken diametrically

[1] Professor Munro attaches a good deal of importance also to a succession of "affairs" and scandals—e g., those associated with the names of Dreyfus (1894-99) and Stavisky (1933)—which have tended to accentuate personal, as opposed to fundamental, issues in politics *The Governments of Europe* (3rd ed), 509–515.

opposite positions. To be sure, the French people sometimes speak with an unmistakable voice; under the aegis of the Popular Front, they so spoke in 1936 in repudiation of fascist leagues and programs. As a rule, however, decisions are reached by ministers and Parliament, on lines largely of their own devising, rather than by the people directly, and one can be somewhat less certain how the electors would themselves decide, and by what majority, than in the case of English-speaking countries. In the second place, the multiplicity of political groups stimulates the demand for proportional representation which has so persistently been made in the last 30 years whenever electoral procedures have been under consideration. Next, it has the effect, as already shown, of requiring all ministries to be coalitions, and of helping to produce ministerial instability, with all of its well-known disadvantages. Further, it slows up legislation and decisions upon policy, since little can be done except after long-considered compromise. When a given party is in power in Great Britain or Australia or Canada, it can map out a program, prepare measures for carrying it out, and procure reasonably prompt adoption of them by a legislature dominated by its supporters. No single party in France is ever so situated. In addition—and this is serious—there is an almost perpetual division of responsibility for what is done or not done. The Liberals can be held definitely responsible for the successes and failures of government in Great Britain in 1906–14, the Conservatives for those in 1924–29. But who shall say that this party or that, this group of leaders or the other had similarly clear and undivided responsibility for what happened in France in any comparable period in the last generation? Finally, the ineptitudes and failures of parliamentary life, from which has sprung much of the criticism of Parliament, and of representative government itself, associated with the term anti-parliamentarism, and in the most recent years with various fascist and semi-fascist movements, are traceable in no small degree to the chaos of party politics, which indeed colors and gives tone to contemporary French government in nearly all of its phases.[1]

PARLIAMENTARY GROUPS

Coming now to a closer view of the situation described on general lines in the foregoing pages, we may start with the group system as found in the Chamber and Senate, and afterwards pass to parties of the

[1] The best analysis of the causes and results of the multiplicity of parties is still A L Lowell, *op cit*, I, 101–137. For an interesting view that, contrary to what might be expected, the group system makes for a less hesitant and divided loyalty to the national (as distinguished from party) interest, see C J. H. Hayes, *France A Nation of Patriots*, 26

slightly from their neighbors, and the fact that one sits farther to the right or the left than another does not necessarily mean that it is actually more conservative or more radical. To discern, indeed, the shades of opinion that separate some of the groups requires, as Professor André Siegfried once remarked, "the subtlety of a theologian expounding the Athanasian creed"; certainly the names employed give no sure indication of the political attitudes sustained.

Each group has a "president," holds conferences, and, in theory, functions more or less like a parliamentary party at Westminster, and it is a combination, or *bloc*, formed from such groups that constitutes the support upon which the ministry at any given time must depend. Poor enough support it naturally is. For not only may the *bloc* itself be rent asunder overnight, but as a rule the individual groups have little control over their members, and even less stability. After a group caucus has reached a decision, members are guided by it or not as they severally choose. The decision may have been to abstain from voting on a given question, but members may disregard it and perversely proceed to vote. It may have been to support a pending measure, but in the face of it they may vote the other way. They may, indeed, desert the group altogether. Not for them the iron rule of whips so familiar at Westminster! Formerly, it was not at all unusual for a deputy to belong to two or more groups simultaneously. This is less common now, yet adherents rarely take their membership very seriously. The individualism which they displayed when seeking election carries over into the Chamber, and they think little of breaking with the group of their original choice and joining another. As a consequence, groups are all of the time dissolving and re-forming, being—to quote Siegfried again—"as uncertain and changeable as the clouds."

PARTIES IN THE TRUER SENSE:

The parliamentary groups just described are localized in the Chamber and Senate and as a rule have, as such, little to do with politics and elections throughout the country.[1] There are, nevertheless, organizations which come closer to the English and American concept of political parties; and although some of them are not yet important enough to have captured a single parliamentary seat, they form, taken together, an important part of the picture.

Starting on the right, and noting only a few of the most prominent alignments, one encounters first the National Republican party,

[1] In scattered instances, however (e g., in the case of the Communists), where they are closely integrated with parties outside of Parliament, they take on somewhat the nature and rôle of "parliamentary" parties in Great Britain

formed by fusion of three lesser parties in 1903 and constituting the outstanding conservative party of today. Enlisting wealthy non-royalist aristocrats, leaders in industry and finance, clericals who accept the republican régime, and other strong opponents of state monopolies and radicalism, the party favors a large army and navy, restoration of property taken from the church, increase of the powers of the president, and freedom for industry from state control, while deprecating extremist labor organization and radical types of social legislation, such as the 40-hour-a-week law of 1936 for workers in industrial, mining, and commercial establishments. Based on a federation of units existing in the various departments, the party is fairly well organized throughout the Republic.

NATIONAL REPUBLICAN PARTY

Next, one comes upon a center party, the Democratic Alliance (*Alliance Démocratique*), formed in 1920 and reorganized in 1936 on the basis of a Republican-Democratic Alliance founded by Carnot in 1901. Drawing its support mainly from the industrial and commercial middle classes, this party favors secularism and religious freedom, advocates moderate decentralization of administration, supports social reform of not too drastic a nature, urges economic liberty, and of course joins with the National Republicans in opposing socialism. Organized throughout the country very much as are the Republicans, the Alliance is noted (among other things) for the able and exhaustive reports submitted to its annual congresses by its *commissions d'études*, or committees of inquiry.

DEMOCRATIC ALLIANCE

If the Democratic Alliance may be termed a right center party, the position of left center may equally be accorded a party representing a union of former Radicals with Radical-Socialists. Once more, names mean little; for, speaking broadly, Radicals are not radicals and Radical-Socialists are neither radicals nor socialists, even though on occasion both elements have cooperated with socialist groups, as for example in the Popular Front of 1935 and after, to be spoken of presently. Supported predominantly by small farmers, retail tradesmen, and other middle-class elements, the party is critical of various features of the existing social and economic order, while nevertheless unprepared to subscribe to socialist programs for making that order something different; although not so termed, it is the true Liberal party of France. The Chamber of Deputies, it holds, should have genuine priority over the Senate, administration should be decentralized and the communes given

RADICAL AND RADICAL-SOCIALIST PARTY

larger liberty; unionizing of public employees should be encouraged and protected. Nationalization of large public utilities is favored; likewise income, property, and business taxes, with no indirect taxes on articles of popular consumption. Advanced labor legislation is advocated; consumers' cooperatives are supported; social insurance[2] is upheld as a necessary means of social justice and security. Larger and more important than most of its rivals, the Radical and Radical-Socialist party has a considerably more effective organization throughout the country than has either the National Republican party or the Democratic Alliance; and, being essentially a pivotal party, its point of view has more commonly dominated the successive governments at Paris than has that of any other element.[1]

SOCIALIST PARTY

The Radicals and Radical-Socialists sometimes tread warily along the borders of socialism, but the next major party to the leftward is frankly socialist. Socialists in France in the past hundred years have been of many stripes, and, as we have seen, not all elements calling themselves socialist have actually been such. In 1905, various socialist groups were brought together under the name of Unified Socialists, and the large and important Socialist party of today represents substantially the same combination. Standing firmly for constitutional methods, the party advocates suppression of the Senate (even as the socialist British Labor party would like to see an end of the House of Lords), demands votes for women in parliamentary and local elections, favors the extension of free secular popular education, and joins with the Radical-Socialists in calling for disarmament among the nations. On the economic side, it stands for the abolition of indirect consumption taxes, the substitution of heavier levies on wealth, advanced labor legislation, agrarian legislation in the interest of small owners, tenants, and farm laborers, the nationalization of large industries, and the extension of state monopolies generally. Since the elections of 1936, the party has held more seats in the Chamber of Deputies than has any of its competitors.

COMMUNIST PARTY

At the extreme left are found the Communists, dating from 1920, when the party split off from the Unified Socialists, and today forming the French section of the Third International.[2] For years, the party has pursued rapidly shifting tactics, now maintaining a scornful aloofness, now voting in the Chamber with bourgeois groups (even the most conservative) as a

[1] W. R. Sharp, *The Government of the French Republic*, 19 The main periods in the last 20 years in which this party's point of view has *not* dominated are 1919–24 and 1928–32

[2] See p 888 below.

means of embarrassing harassed cabinets. In compliance with advice of the Third International in 1935 that Communist parties everywhere come to terms with democratic parties in common resistance to fascism, the French party forthwith instigated and identified itself with the Popular Front, to be spoken of below. The program, however, remains ostensibly as revolutionary as that of the corresponding party in the Soviet Union—even though with a paradoxical tenderness toward "small" property, particularly the little land-holdings of the lower bourgeoisie and peasantry.[1] The citadel of French communism is Paris, but considerable strength is shown in other cities, with scattering support in various rural areas.

"BLOCS" AND "FRONTS"

As if parliamentary groups and nation-wide parties did not present a sufficiently complicated picture, a third set of political affiliations, on still a different level, forces itself upon the attention, *i.e.*, the great coalitions or *blocs* which from time to time contend for mastery at Paris. Good illustrations are afforded by the *Bloc National* and the *Cartel des Gauches*, which contended sharply with one another some 20 years ago, and by the "Popular Front" and "Republican Front" of more recent days. Ostensibly a continuation of the *union sacrée* which for a time during the World War embraced substantially all political elements, the *Bloc National* was a combination of bourgeois parties and groups actuated by a sense of solidarity on the towering issues of the early post-war period, and especially by hostility to both the domestic and international programs of the Unified Socialists. Rallying the forces of half a dozen supporting parties, it routed the Socialists in the elections of 1919 and gave France one of the most conservative Chambers in her history. Taking a leaf out of the conservative book, the Unified Socialists thereupon built up an equally imposing *Cartel des Gauches*, which, in the elections of 1924, completely turned the tables on the rival coalition. One familiar with the volatile nature of French politics would not, however, have expected the competing alignments to endure; and, truly enough, both presently dissolved into their original elements.

The "Popular Front," of more recent fame, was a gigantic coalition born of the fear of fascism, and, unlike the *Cartel des Gauches*, intended not merely for electoral purposes, but also to govern. As early as 1927, a vigorous fascist "political league," the *Croix de Feu*,

[1] A. Maurois, "The Paradox of French Communism," *Curr. Hist.*, Nov., 1938, commenting on the passionate devotion to private property evinced by many Frenchmen who for one reason or another—mainly a desire to see large estates divided up—vote Communist. Questioned closely, plenty of such voters prove to be incurable individualists, wholly averse to dictatorship.

made its appearance, to be followed by other similar organizations in such number as to suggest that a people manifestly disheartened by the failure of parliamentary government to cope with urgent problems of the time might quite possibly surrender almost over night to the fascist ideology. To build a bulwark against such conquest, the great parties of the Left—chiefly the Radicals and Radical-Socialists, the Socialists, and the Communists—drew together in 1935 in a *rassemblement populaire*, or Popular Front, which first engineered a considerable amount of progressive legislation on lines of a French "New Deal," and, afterwards, in the elections of April-May, 1936, won a smashing victory, gaining a clear majority of 165 in the Chamber, with the Socialists appearing for the first time in their history as the largest voting group.[1] Once more, however, the precarious nature of coalitions formed from essentially incompatible political elements was demonstrated; and although three successive ministries [2] rested upon a Popular Front basis, all were short-lived, and the Daladier "national defense" government in office at the outbreak of war with Germany in 1939 was mainly a Radical-Socialist affair, with a minority of its members drawn rather from farther to the right than from the Socialist and Communist parties which had been the Popular Front's principal support. Meanwhile, as might have been anticipated, parties and groups of the Right, representing broadly the forces of economic conservatism, drew together loosely in a rival "Republican Front," even though the alignment could be expected to last only so long as the competing combination retained its vitality.[3]

FRENCH FASCISM

Parliamentary groups, nation-wide parties, *blocs* and coalitions—all combine to produce a political picture of bewildering complexity. Still further complication, however, is added by a multitude of other organizations and movements having political significance, whether or not cast in the rôle of "parties." There is, for example (or was until dissolved as a political organization by government decree in 1936), a League for

[1] In this election, the three cooperating parties, although issuing individual manifestoes, issued also a joint minimum platform or program. For an English version of this document, see W. E. Rappard *et al*, *Source Book*, Pt II, 31–34.

[2] Headed by Léon Blum, Camille Chautemps, and again Léon Blum.

[3] The rise and early triumphs of the Popular Front are described vividly in W. R. Sharp, "The Popular Front in France, Prelude or Interlude," *Amer. Polit. Sci. Rev.*, Oct., 1936. Cf. J. C. de Wilde, "The New Deal in France," *Foreign Policy Reports*, XI., No. 12 (Sept. 1, 1937), J. W. Pickersgill, "The *Front Populaire* and the French Elections of 1936," *Polit. Sci. Quar.*, Mar., 1939, M. Thorez, *France Today and the Popular Front* (London, 1936), L. Blum, *Le réforme gouvernementale* (Paris, 1936), and J. Berlioz, *The Achievements of the Popular Front in France* (London, 1937).

French Action (*Ligue de l'Action Français*), dating originally from 1898 and devoted to defense of the interests of the Catholic church, propagation of the spirit of nationalism, and agitation in behalf of a restoration of monarchy.[1] A League of Patriots (*Ligue des Patriots*), formed in 1882 to foment a war of revenge against Germany, is another strongly nationalistic organization bent nowadays more particularly upon combatting international communism. A National Republican League (*Ligue Républicaine Nationale*) is interested in increasing the powers of the president as a means of putting an end to chronic parliamentary confusion, and as one way of doing this, would strengthen the right of dissolution by doing away with the necessity of obtaining the prior consent of the Senate.

All of the organizations just mentioned, and others besides, desire to see France endowed with a decidedly stronger government. Pointed in the same direction were various anti-parliamentary leagues, *e.g.*, the Young Patriots (*Jeunesses Patriotes*), founded in 1924, which, purporting usually to have no objective beyond helping the country gain a government that could "really govern," eventually merged their memberships and programs largely with those of the spectacular fascist organization referred to above, the *Croix de Feu*. Starting in 1927 as a club to which only war veterans who had won the *croix de guerre* were eligible, this last-mentioned organization—seized upon by army men as a useful agency for promoting military preparedness, and subsidized liberally by business interests—widened its membership to include both relatives of veterans and other interested people, especially youth; and under the astute, although not particularly inspiring, leadership of a certain François de la Rocque, it by 1935 drew into its wake substantially all of the anti-parliamentary forces of the country. As indicated above, it was the reactionary ground-swell of which the *Croix de Feu* seemed the most threatening symptom that inspired the formation of the Leftist Popular Front; and the impressive victory won by that new coalition in the elections of 1936 not only dealt the fascist cause a staggering blow, but brought into office a ministry—that of Léon Blum—which lost no time in decreeing the dissolution both of the *Croix de Feu* and of other similar associations which until now had retained a separate existence. The "French Social party," which de la Rocque thereupon announced as successor to the banned league, has never gained importance. A "Peasant Front," built up in 1935–36 by the vigorous

[1] Maintaining headquarters in Belgium, the Duke of Guise, as pretender to the throne, still has devoted followers in France. Cf. C. T. Muret, *French Royalist Doctrines Since the Revolution* (New York, 1933), Chaps. xiii–xv, and C. Maurras and L. Daudet, *L'action française et le Vatican* (Paris, 1927).

young Henri Dorgères, aiming at bettering the lot of the rural peasant, and threatening "direct action" if more regular means should fail, attained some temporary significance, but is of little importance today as a political force. The same is true of a Popular French party (*Parti Populaire Français*), led by the demagogic ex-Communist Jacques Doriot (even as the British Union of Fascists was led by an ex-Laborite, Oswald Mosley); although the somewhat nondescript rank and file of this organization would like nothing better than to set up its burly leader as a French *Fuhrer* in case the country should yield to the pressures flowing from a fascist encirclement.[1]

FRENCH POLITICS A MATTER OF OSCILLATIONS RIGHTWARD AND LEFTWARD

It is a paradox of French character that politically it leans to the left but socially to the right and the power of its conservative social inclinations is such that the politics of the country becomes a ceaseless, sometimes rapid, ebb and flow as between left and right. "The Center," says Professor Siegfried, "has never been able to remain in power for any length of time, because to obtain a majority, it must either depend on the Right—which means the church—or on the Left, which means socialism or even communism. The center of gravity thus alternates between the Right and the Left, but fortunately it can never wander very far from the Center—where, however, it is seldom poised for long."[2] Not often, indeed, as we have seen, is the political center of gravity poised for long *at any point*. Nevertheless, the shifts continually occurring have less significance than is often attached to them abroad, for, as suggested by the passage quoted, they never—at least more than momentarily—carry the country very far out toward the extremity of either Right or Left. "The Frenchman," Professor Siegfried observes further, "may carry his rifle, now on his right shoulder, now on his left, but he seldom falls into the ditch"—which is but another way of saying that the highly volatile party structure of France does not, in its actual effects upon national policy, work out so differently as might be imagined from the simpler and more stable structures of English-speaking countries.

THE OUTLOOK FOR BI-PARTYISM

Many times the question has been raised—particularly by those who simply take it for granted that the two-party system is more desirable than any other—as to whether France may be expected eventually to achieve bi-partyism, or at all events a consolidation of political forces

[1] A survey of the general subject will be found in R Millet and S Arbellot, *Ligues et Groupements* (Paris, 1935). Cf A Werth, "French Fascism," *Foreign Affairs*, Oct, 1936, and *Which Way France?* (New York, 1937).

[2] *France. A Study in Nationality* (New Haven, 1930), 61.

into perhaps three or four strong and stable parties. No man, of course, can tell. Those who think that they discern some tendency in this direction cite such developments as (1) the growing strength and solidarity of certain nation-wide parties, notably the Socialists and the Radicals and Radical-Socialists; (2) the perfecting of party organization and stiffening of party discipline, impressively in the case of the Radicals and Radical-Socialists, the Socialists, and the Communists, perceptibly but less effectively in that of certain parties of the Right; (3) the frankness of some parliamentary leaders in deploring the handicaps and absurdities of the existing group system in the chambers, (4) the increasing rôle of great political coalitions or *blocs;* and (5) the "trend toward 'extremism,' the weakening of the political center in favor of the periphery," which "may herald a new bi-polar pattern of behavior on the part of the French electorate." [1] Neither singly nor taken together do these tendencies, however, lead to any positive conclusion, and one may doubt whether the country will again in the near future come as close to a bi-party or tri-party system as it actually was some two generations ago, when three reasonably compact parties, and only three, shared the support of practically the entire nation.[2] Large, rapidly forming, and as rapidly dissolving *blocs* of Right and Left are, however, likely to continue to appear in the political arena, affording, at intervals, the semblance of two-party combat.

PARTY ORGANIZATION

In the list of French parties will be found some which have no definitely enrolled membership, no formal constitution, no annual congress, no machinery except perhaps a self-constituted committee or two, no nation-wide organization whatsoever. This, indeed, is true generally of the parties of the Right and Right Center; or, if schemes of organization exist, they are rather on paper than actually in operation. As one moves leftward, however, more organization is encountered; and in later years the Radicals and Radical-Socialists, Socialists, and Communists have attained enrolled memberships, standards of discipline and morale, instrumentalities of party decision and action, and arrangements for financial support worthy of being compared with those of leading parties in the English-speaking world. Where effective organization exists, the conditions of party membership are usually laid down in the party constitution or by-laws, and ordinarily the obligations stipulated include not only loyalty to

[1] W R. Sharp, *The Government of the French Republic,* 22.

[2] Conservatives, Republicans, and Radicals. See F. A. Ogg, *The Governments of Europe* (1920 ed.), 484-486.

the party creed or platform but payment of admission fees and regular annual dues for the party's support. In the Radical and Radical-Socialist party, for example, any person [1] may apply for membership in a local (communal or cantonal) committee of the party, and if accepted gain entrance to the committee—and thereby to the party—by paying an entrance fee of two francs and agreeing thenceforth to help the committee meet its yearly obligation to the general party treasury, and there are also memberships for dues-paying newspapers supporting the party.

RADICAL AND RADICAL-SOCIALIST MACHINERY

In its organizational set-up, the Radical and Radical-Socialist party may, indeed, be taken as fairly typical of the Leftist parties. To begin with, there is a party constitution, dating in its present form from a party congress held at Lyons in 1935.[2] The basic party units (consisting in no case of fewer than seven persons) are the communal or cantonal committees above referred to, these being federated into department units, which in turn send delegates to the annual nation-wide party congress, meeting successively in various principal cities of the country. Like similar party conclaves in England, the congress is, at least in theory, the sovereign authority of the party, and as such it decides upon party principles, revises the party constitution, serves as a court of last resort in matters of discipline, and elects annually an executive committee which acts for it in party affairs between meetings. Including, as *ex officio* members, senators, deputies, members of departmental and other local councils (if members of the party), and also numerous party officials, both national and local,[3] this executive committee designates an inner group, or bureau, of 33 members which manages the party central office in Paris and in general takes care of matters calling for attention between the monthly sittings of the large committee Finally, this bureau chooses a president (who becomes also president of the party), and likewise a general party secretary.

RADICAL AND RADICAL-SOCIALIST FINANCES

Judged by American standards, French parties do not raise and disburse large sums of money. Parliamentary candidates are usually expected to finance their own campaigns; at all events, they commonly can count on little money being sent down from Paris to assist them in wooing the electorate. There are other pur-

[1] Woman as well as man, for, curiously, women, although not voters, can be active party members

[2] For an abridged English version, see W. E. Rappard *et al*, *Source Book*, Pt. II, 19–26.

[3] The membership of the committee usually falls not far short of 2,000

poses, however, for which funds are needed, and (still having in mind chiefly the Radicals and Radical-Socialists) the sources tapped are many and various. First of all, there is the system of membership dues, payable annually, and ranging from as little as 10 francs in the case of local committees to 25 francs for newspapers, 50 francs for the general run of members of the executive committee, and 1,000 francs for members who are also senators and deputies. Then there are sales of pamphlets and other party literature, also sums raised occasionally by special subscriptions sponsored by the party press. And once in a while, although not often, a well-to-do party member makes a sizable gift, or an outside commercial or agricultural organization sends in a contribution with a view to furthering some Radical-Socialist policy which it would like to see prevail. Nevertheless, as has been indicated, the party managers must usually practice all reasonable frugality.

ASPECTS OF SOCIALIST AND COMMUNIST ORGANIZATION

In thoroughness of organization, the Socialists and Communists excel even the Radicals and Radical-Socialists. Starting with a *cellule* ("cell," or "section") in the commune, the Socialist hierarchy mounts upward from level to level until the national congress and national executive committee are reached; and a dues-paying membership is both more closely integrated and more rigorously disciplined. As in the case of the British Labor party, attempt is made to control the conduct of those who bear the party label in the national legislature. Candidates in the constituencies are expected to submit for approval by the party authorities at Paris any individual platforms that they may choose to announce; if elected, they are responsible for voting in Chamber or Senate in accordance with the decisions of the national congress; and if they break over too far, they may be, and sometimes are, required by the local party authority to resign their seats.

But it is in the Communist party that integration and discipline reach their peak. Organized as the French section of the Third International, and faithfully reproducing Communist machinery and techniques as found in the U.S.S.R., the party is more truly directed from Moscow than from Paris, and the chief function of officers and leaders is to carry out instructions received from that source. The local "cells" are constructed on an industrial or professional, not a geographical, basis, and, with all power wielded from the top downward along the lines of a rigid hierarchy, they and their members enjoy no trace of self-control or autonomy. If differences of opinion arise, there is nothing for the dissidents to do but accept the

discipline asserted over them or submit to ejection from the party. Much of the money received from dues and other sources goes for salaries, rentals, and election costs; but, as is true also of the Socialists, and in less degree of the Radicals and Radical-Socialists, expenditures are directed primarily to the preparation, publication, and distribution of literature calculated to inform and inspire the faithful, and especially to win new recruits.[1]

[1] Important works dealing with the French party system of earlier days include L. Jacques, *Les partis politiques sous la troisième république* (Paris, 1913); A Zévaès, *Le parti socialiste de 1904 à 1923* (Paris, 1924), and R H Soltau, *French Parties and Politics, 1871–1921*, with a supplementary chapter on the period 1922–30 (London, 1930). R. L. Buell, *Contemporary French Politics* (New York, 1920), deals extensively with parties of the war and early post-war periods, and E M Sait, *Government and Politics of France*, Chap x, more briefly with the same subject A. Siegfried's *Tableau des partis en France* (Paris, 1930), and his *France A Study in Nationality* (New Haven, 1930), containing largely the same material, are admirable interpretations, as are also D. M Pickles, *The French Political Scene* (London, 1938), and a lengthy chapter by P. Valeur in R. L Buell (ed), *Democratic Governments in Europe*, cited previously. Numerous informing articles will be found in the bi-monthly *Sciences Politiques* during 1936–38. The standard work, however, may be said to be G Bourgin, J. Carrère, and A. Guérin, *Manuel des partis politiques en France* (Paris, 1928).

CHAPTER XXVIII

Law and Justice

IN AN earlier chapter dealing with the origins and development of law in England, we observed that the legal system of that country is fundamentally different from that of France, and furthermore that while the law of English-speaking lands the world over, including the United States, is basically English, the law of most Continental European countries west of Russia, and of nearly all of the Latin American republics, is of the same stock and general aspect as the French. Nor does the divergence stop with merely the form and content of the law. It extends also to the nature, relationships, and procedures of the courts in which the law is interpreted, applied, and enforced. In turning to the subject of French law and justice, we therefore are entering a field in which there is at least as much that is new and distinctive as in the areas of administration, legislation, and party government already surveyed.

A SYSTEM WITH MANY DISTINCTIVE FEATURES

For the origins of French law, as indeed of English law also, it is necessary to go back a long way. To begin with, it must be recalled that the country which we know as France formed at one time—under the name of Gaul—a part of the far-flung Roman Empire. The same was true of England northward to the Firth of Forth. But whereas in the latter country there was practically no survival of Roman institutions and culture from the days when the Caesars ruled, so that any subsequent influence of Rome upon legal concepts and principles must be traced rather to a belated and not very powerful infiltration from the Continent during the Middle Ages, in France the law of Rome, once planted, was never uprooted and has persisted as a basic influence throughout all later times. Naturally, it was in the southern and more thoroughly Romanized portion of the country—speaking broadly, the region south of the Loire—that the legal system projected from the Tiber took firmest hold; and for centuries after political control collapsed under the impact of the German invasions, that area was known as the *pays de droit écrit*, or land of the written (*i.e.*, Roman) law. But in the center and north, likewise, the

HOW FRENCH LAW AROSE:

1. THE ROMAN ELEMENT

Roman tradition never wholly died out; and when, less than a century and a half ago, the country arrived at a single, uniform legal system, the Roman heritage supplied much of the foundation, framework, and ornamentation of the structure.

2. CUSTOM

Meanwhile, however, in the Middle Ages the field was taken more largely by another sort of law, *i.e.*, custom. France became the classic land of feudalism, and all over the country, particularly in the north, arose regional or local systems of legal usage, sprung in part from ancient Germanic practices, but largely evolved on the spot by officials to whom it fell to make seigniorial rules and administer seigniorial justice. To a degree, the *coutumes* (customs) of petty jurisdictions tended to merge into bodies of law having force throughout entire provinces or other extended areas. But never in mediaeval or earlier modern times were they welded into a single nation-wide system comparable with the English common law. On the opposite side of the Channel, masterful kings, beginning with William the Conqueror, stretched out the long arm of royal power and, by means of justices sent throughout the land to try cases and render decisions in the king's name, gradually brought about substantial uniformity of legal usage and doctrine In France, too, strong kings of later centuries raised royal power to imposing heights. Before they were able to do this, however, regional law became so deeply entrenched and so jealously guarded as to be able to withstand every sort of nationalizing pressure until a new order of things was ushered in by the Revolution of 1789 At the middle of the eighteenth century, Voltaire remarked that a traveller in his country had to change laws almost as often as he changed horses, and truly enough, considering that, in addition to some 60 *coutumes générales*, each applying to a province or other large area, there were about 300 *coutumes locales*, each in force in a single city or village.

Originally, the customary law was unwritten. In time, however, jurists began making up collections of it for different regions—*livres coutumiers*, they were called—and judges' clerks sometimes compiled registers of notable decisions. By the sixteenth century the customs applying throughout particular provinces or regions of the *pays coutumiers* had in most cases been formally recorded Indeed, codification became a matter of official action. Drafts prepared by the king's judicial agents in the districts were submitted to the central government, referred back for adoption by provincial or other assemblies, and finally proclaimed by royal commissions; after which the texts could legally be altered only by the same pro-

cedure. From first to last, however, there was no consolidation of the different systems into one.

3. ROYAL LEGISLATION

To all this was added not only a luxuriant growth of canon, or ecclesiastical, law, but also, after the fifteenth century, a considerable amount of royal legislation in the form of ordinances or edicts applying sometimes to the entire country, sometimes to specified sections only. Before such edicts could take effect, they must be "registered" by provincial judicial bodies known as *parlements*.[1] But this set up no serious impediment, because there was a well-known procedure by which the king, in case of opposition or delay, could force registration in a "bed of justice." In days before 1614, when the Estates General was still convoked from time to time, a meeting was likely to be followed by the promulgation of a *grande ordonnance* covering matters on which the estates had urged or demanded that something be done; and a good deal of new law, as well as much revision of older law, arose in this way. Even after the Estates General ceased to meet, *grandes ordonnances* continued to make their appearance, chiefly in the form of codifications of particular branches of law. All in all, the country by 1789 had a rather imposing superstructure of royally made or codified law, extending throughout its length and breadth. The great mass of law underneath was, however, still regional or local.

THE REVOLUTION AND THE NAPOLEONIC CODES

Recognizing that an integrated, uniform system of law is a prime requisite of national unity, and convinced that a great part of the country's legal heritage needed reworking to fit it for a liberalized society, the early Revolutionary assemblies addressed themselves to displacing regional systems by a nation-wide system, and to restating legal rules and principles on lines compatible with the new political and social order. One body of customs after another was swept away; ordinances were overhauled or rescinded; new and uniform laws, in the form of statutes, were enacted on land tenure, inheritance, marriage and divorce, criminal procedure, and other subjects It was thought desirable, too, that the law, both new and old, be completely assembled in systematic codes; and though pressed by other and even more urgent duties, the Constituent Assembly, and in its turn the Convention, got this work also under way. The first of these two bodies gave the country, in 1791, its first penal code; the second, four years later, a new code of criminal procedure. Especially was there demand for a civil code. Many of the *cahiers*

[1] In earlier times, the term always denoted, not a legislature, but a court.

of 1789 urged that one be promulgated, and the constitution of 1791 contained a definite pledge on the subject. To rework, round out, and consolidate so vast a branch of law was, however, a herculean task; and although each of the early assemblies tried its hand at the job, no great headway was made until Napoleon turned his attention to it.

The Corsican is best known to the world as a soldier. He was, however, a statesman and administrator of the first order, and from few of his exploits did he derive more satisfaction than from seeing through to a finish the weighty enterprise of revising and codifying the entire expanse of French jurisprudence. Entrusting completion of the civil code to a specially appointed commission of four jurists (practitioners rather than theorists), he arranged for difficult and disputed matters to be threshed out by a body of experts known as the Council of State, over whose deliberations he often presided in person; and on March 31, 1804—less than two months before the Empire was proclaimed—the new *Code Civil des Français* was promulgated in its entirety.[1] Afterwards, in 1807, came a code of civil procedure; in 1808, a code of commerce, in 1811, a code of criminal procedure and a penal code—all based to a considerable degree upon codes of Bourbon days, but incorporating such rules and practices of later origin as were deemed worthy of being perpetuated, and, in addition (as in the case also of the Civil Code), introducing quite a bit of new law as well. Love of symmetry and order inclines the French people to a greater fondness for systematized codes of law than has ever been shown by English-speaking nations. The Revolutionary and Napoleonic codifications were, however, made a practical necessity by swift and sweeping changes in the existing legal order such as no English-speaking country has ever experienced, in a period when old regional systems were being supplanted wholesale, the only way of preventing chaos was to set out the new nation-wide system in full, orderly, and explicit form. To be sure, some American states and certain British dominions have acquired civil codes, criminal codes, and codes of procedure. As a rule, however, these codes are less comprehensive than the French, while Great Britain herself has undertaken codification in only a still more limited way. In Continental Europe, in Latin America, and in Japan, the French codes have had profound influence. The Civil Code, for example, will be found in Belgium practically intact; in Germany,

[1] The 2,811 articles of the code dealt with civil status, marriage, divorce, domicile, guardianship, ownership, wills, contracts, torts, and scores of other matters Roman influence was perceptible throughout, especially in the paternalistic slant of many provisions.

it was given up by Baden and the Rhine provinces only when a nation-wide civil code was promulgated in 1900, and indeed left its impress deeply on that code; the civil law of the Netherlands, Italy, Spain, Portugal, Greece, Egypt, and most of the Latin American states is patterned closely upon it.[1]

FRENCH LAW TODAY

The law of France today consists primarily of the Napoleonic codes as amended and broadened during the century and a quarter since they were promulgated. With the passage of time, the original texts naturally grew out of date; new conditions and needs, especially those flowing from increasing industrialization and other economic changes, rendered some provisions obsolete and called for the modification or addition of others. The codes, however, were never discarded; rather, they have simply been revised, supplemented, and extended. As early as 1832, the code of criminal procedure and the penal code—as also that part of the code of commerce pertaining to bankruptcy—required reworking. Again, under the Second Empire the criminal and penal law was remodelled to bring it into line with newer and more humane principles. In 1897, important changes were made in criminal procedure, and in 1904 advantage was taken of a celebration of the centennial of the Civil Code to give that monumental *corpus* of law an extensive overhauling. On all of these occasions, and many others not here mentioned, opportunity was seized to work into the appropriate code whatever new law on the given subject had accumulated since the last revision; and thus the codes are maintained as no mere museums of legal rules and principles, but as living, dynamic organisms.

French law has, therefore, two or three outstanding characteristics. In contrast with the situation in the eighteenth century, it is, in the first place, a uniform system, applying equally from the Belgian border to the Mediterranean. In the second place, in contrast with the law of English-speaking countries, it is a written law. There is, of course, much written law in Great Britain and the United States. Nevertheless, in both lands that great mass of jurisprudence known as the common law is largely unwritten—at all events, for the most part not assembled in formal codes. In France, there is virtually no law that cannot be read in the books. In the third place, French law,

[1] S. Amos, "The *Code Napoléon* and the Modern World," *Jour. Compar. Legis. and Internat. Law*, Nov, 1928, *Le code civil, livre du centenaire* (Paris, 1904)—a volume of valuable essays by French and other lawyers. When, some years ago, the founder of a new dynasty in Persia telegraphed to Paris for the *Code Napoléon*, a boxful of commentaries, and a commission of French jurists, he was doing in effect only what many a creator of a new régime, the world over, had done before him.

although at many points rooted back in custom, is enacted or statutory law. In Britain, the common law, essentially judge-made, is, as we have seen, basic, and statute, although growing in amount, hardly does more than fill up gaps. But in France, nearly all of the law is to be found in the great codes and their revisions, formally voted by some constituted authority, and in such acts of Parliament as have not yet attached themselves to any code. It is true that in deciding cases French judges have some regard for precedents and to a limited extent bend the law in this direction or that, thereby at least partly determining what the law shall be. The theory of French jurisprudence, however—totally different from the British—is that judges will decide each and every case on its independent merits, applying the law as it comes to them from the legislature without addition or subtraction, and aiming only at justice in the particular case, not at conformity with precedent. And the theory is so far realized in practice that no general rule of *stare decisis* has ever developed; such law as emanates simply from the court-room after the manner of the English common law is, even though by no means negligible, at all events rather incidental.

From all these things it results that French law has the undoubted merits of definiteness, accessibility, unity, and symmetry. Nobody need have much doubt about what the law is. Indeed, it has been elaborated in such detail that, as indicated earlier, Parliament finds itself confronted with considerably less formidable legislative tasks than those which burden the legislatures of other countries—which is perhaps one of the reasons why the chambers can so freely indulge their bent for prying into the work of the administrative authorities. In any case, a penalty entailed by such comprehensiveness and symmetry, and by so much deference toward codes, is a certain loss of flexibility; and complaint is sometimes heard that it is more difficult to keep the law abreast of social and economic developments and of changing public attitudes than across the Channel, where law is more elastic and grows by less fixed and formal processes.[1]

THE JUDICIARY BEFORE 1789

No part of the French governmental system called more loudly for reform when the Estates General met in 1789 than did the judiciary. The country had no lack of courts, but they were not linked up in an

[1] F. Déak and M. Rheinstein, "The Development of French and German Law," *Georgetown Law Jour.*, Mar., 1936, contains a useful survey of the growth of the French legal system. Cf. J. Parker, *Some Aspects of the French Law* (New York, 1928), J. Brissaud, *History of French Private Law*, tr. by R. Howell (Boston, 1912), and for bibliography, G. W. Strumberg, *Guide to the Law and Legal Literature of France* (Washington, 1931).

integrated system, and the justice dispensed in them too often left much to be desired. In many parts of the land, to be sure, courts had been established under direct authority of the king. The *parlement* of Paris was a vigorous court of last resort, and something like a dozen provincial *parlements* patterned on it rendered important service in their respective localities. Seigniorial and other largely independent local tribunals surviving from the Middle Ages, however, cluttered up the situation, as did also numerous ecclesiastical courts with claims to extensive jurisdiction; and in the relations of these with one another and with the royal courts there was endless confusion. Speaking generally, too, the level of judicial capacity and integrity was low. Judgeships and other offices having to do with justice were often turned over by the government to the highest bidder, incumbents sometimes sold their posts to other people, not a few judgeships became to all intents and purposes hereditary. Having paid well for their positions, judges were prone to recoup themselves by accepting gifts, often in money, from parties to suits.

REVOLUTIONARY REFORMS

The Constituent Assembly lost little time in deciding to reconstruct the judicial system along with the law itself; and it so well succeeded that few changes of major significance have later been found necessary. First of all, it set up a system of administrative courts to handle suits arising from dissatisfaction of citizens with the orders or acts of public officials. Then it provided for judicial actions of other sorts, civil and criminal. Borrowing from England, it placed in every one of the newly created cantons a *juge de paix*, or justice of the peace. In each *arrondissement*, or district, it set up a civil court composed of five judges. In each department, a criminal court, consisting of judges drawn from the district courts, was to handle criminal cases, with the assistance of a jury. A court of cassation [1] at the capital was to give final consideration to appeals on questions of law. Judges were to be elected for a term of years; and ample safeguards were provided against bribery and other forms of misconduct on the bench.

LEGAL BASIS TODAY

Save in one respect, the judicial system thus provided for survives today: popular election of judges failing to yield satisfactory results, appointment from Paris was gradually substituted in 1799–1804—significantly, in the early stages of the Napoleonic régime. Furthermore, to this day the system rests almost entirely, not upon constitutional provision, but upon statute; beyond authorizing the Senate to sit as a high court of justice for the trial of impeachment cases and of cases involving

[1] The term "cassation" is derived from *casser*, meaning "to annul."

court of this variety will be found from three to fifteen magistrates, or judges, who in *arrondissements* boasting as many as six are grouped in two or more sections, or chambers, each specializing in either civil or criminal cases—although the judges rotate among the sections. Attached to each court, too, is a prosecutor (*procureur*), who, in person or by deputy, "defends the interest of society before the court." In civil matters, the court has both original and appellate jurisdiction, the latter in respect to cases involving more than 1,000 francs and carried up from a justice of the peace, but all cases involving more substantial sums can be appealed still higher. In the matter of infractions of the law, the court has jurisdiction in cases of misdemeanor (*délit*), *e.g.*, theft and embezzlement, but not in such as involve murder or other crime. Juries are not employed, but all judgments in misdemeanor, or "correctional," cases are subject to appeal.

3. COURTS OF APPEAL

The tribunals to which such appeals are carried form the next grade in the ascending scale, and are known as courts of appeal. Of these, there are 27 (including one in Algeria and one in Corsica), each functioning for a *ressort*, or judicial province, consisting of from one to seven departments. A court of appeal must number at least five judges; but there are usually many more, sitting in sections or chambers of five or more each. Normally, there is a civil section, a criminal section, and also a *chambre d'accusation*, or indictment section, which does the work performed in America by a grand jury; and each court is equipped with a large staff of public prosecutors, assistant prosecutors, marshals, recorders, and other auxiliaries who form part of what the French call the "standing" magistracy as distinguished from the "sitting" magistracy, or judges. Nearly all of the work of these courts consists of hearing appeals, and on questions of fact, although not on points of law, their decisions (known as *arrêts*) are final.

ASSIZE COURTS

Appeals in civil cases are handled directly by the appropriate chamber or chambers of the court of appeals having jurisdiction. For criminal appeals, a different arrangement exists. In each of the 90 departments is set up every three months [1] a court of assize, consisting of one of the judges of the court of appeals in whose territorial jurisdiction the particular department lies, together with two associate judges drawn from the local court of first instance; and to these tribunals (important but not constituting a separate rung in the ladder of courts) go all

[1] Every two weeks in Paris, where in fact sessions are practically continuous

appealed cases of a criminal nature—cases, it should be observed, ordinarily involving offenses of the more serious sort, classed by the penal code as crimes. Here alone in the entire gamut of French justice one encounters that common feature of English and American judicial practice, the jury. In advance of every session of an assize court, 36 names are drawn by lot from the departmental voting list, and from this panel are drawn for every criminal case the names of 12 persons who in that particular case will decide the guilt or innocence of the accused, with a right (more sparingly exercised than in America) on the part of both the prosecution and the defense to challenge and cause to be rejected any number of names up to a maximum of 24. In English-speaking lands, a unanimous vote of 12 jurors is necessary to convict. In France, however, verdicts are rendered by simple majority, except that when a jury is divided six to six, or seven to five, the three sitting judges, if they can act unanimously, may frame a verdict of acquittal, though never of conviction. In any event, the jury determines only the facts, while the judges apply the law.[1] Two alternates sit with every jury, so that if a juror falls ill or otherwise drops out, his place can at once be filled and the trial proceed without the interruption—perchance the necessity of starting all over again—which such a circumstance commonly entails in England and the United States. Jury trial is not, however, indigenous to France,[2] is not wholly suited to the French temper, and is regarded by many competent critics as the weakest element in the nation's judicial system. "Nobody," writes a leading French commentator, "entertains any illusions, there are few institutions more discredited than the jury." The courts, says another, might as well "allow justice to depend upon a throw of the dice as upon the verdict of the jury." As suggested by the last remark, a main criticism is that juries are now rigorous, now indulgent, prone to severity in cases involving attacks on property, but to leniency in cases of assault or other so-called *passionel* offenses; too often swayed by local prejudices or political feeling; too susceptible to the oratory of clever criminal lawyers. So far as that goes, plenty of fault is found with juries in America, particularly in the handling of murder cases. But no other known device for determining guilt and innocence, when much—even life itself—is at stake, promises better.

THE JURY SYSTEM

[1] But see pp 570–571 below

[2] It was borrowed from England during the Revolution and perpetuated, although reluctantly, by Napoleon.

4. COURT OF CASSATION

At the apex of the pyramid of ordinary courts stands the Court of Cassation, or supreme court of appeal, established in 1790. Sitting at Paris, this court consists of a general president, three presidents of sections or chambers, and 45 other judges (known technically as *conseillers*); and for working purposes it is divided into (1) a chamber of requests (or petitions), which examines civil appeals in a preliminary way and decides whether they have substantial merit, (2) a civil chamber, which gives appeals recommended from the chamber of requests a final hearing, and (3) a criminal chamber, to which go all criminal appeals. The court has no original jurisdiction, and in appealed cases it considers only questions of law and competence, never questions of fact. Furthermore, upon quashing a decision of a lower court, it does not (except by implication) substitute a decision of its own, but merely sends the case back for retrial—not, however, to the court from which it came, but to another of the same grade. If this second lower court takes the same position as the first one, the Court of Cassation brings together a minimum of 33 of its judges and gives the matter a solemn reconsideration; whereupon, if there still is a disposition to hold out against the lower courts' verdict, the case is sent to a *third* lower court—which by law is required, as a matter of form, to accept and apply the dissenting judgment of the superior tribunal. Few high courts throughout the world enjoy as great prestige as does the French Court of Cassation, and large numbers of cases come before it every year. In deciding recurring appeals of similar nature, on similar or identical subjects, it naturally tends to be guided by precedents which it has itself established; and thus, although (as pointed out above) case law has attained no such importance as in England, the court's decisions not merely serve the interests of justice but aid in developing and preserving unity in the country's jurisprudence.[1]

GENERAL FEATURES OF THE ORDINARY COURTS

From even this bare outline of structural arrangements, certain general features of the system of ordinary courts are apparent. One of them is the "unity of civil and criminal justice,"

[1] Certain special courts standing outside the regular system described, and composed of non-professional judges, have considerable importance, chiefly (1) commercial courts in the larger towns, consisting of merchants chosen by the whole number of merchants in the area, and wielding jurisdiction (subject to appeal to the courts of appeal) over disputes arising out of commercial transactions, and (2) courts of industrial arbitration (*conseils de prud'hommes*), made up equally of employers and employees, presided over by a justice of the peace, and charged with settling wage disputes and other controversies springing from labor relationships, with right of appeal to a court of first instance.

which means that, although procedures may differ, civil actions and criminal cases are for the most part handled by the same courts, not —as commonly in England and the United States—by separate tribunals; even though to a degree the effect of separation is obtained from division of the higher courts into civil and criminal sections. A second fact is that, speaking generally, the English and American system of circuit judges has never been adopted in France, so that courts commonly sit at only one specified place.[1] Thirdly, all French courts, except those of the justices of the peace, are "collegial"; that is to say, they consist of a bench of judges, and —again excepting the justices' courts—no judgment is valid unless concurred in by at least three of the number. Except in the highest levels of appellate jurisdiction, England and America regularly (and on the whole wisely) trust to the intelligence and integrity of a single judge. The Frenchman, however, regards this as dangerous. With him, *pluralité des juges* has been a fixed rule; *juge unique, juge inique*, a proverb. In later days, to be sure, the plan has come in for a certain amount of criticism. Not only does the country have more courts than it needs,[2] but the plurality principle results in an astonishingly large judicial personnel (something like 3,600, exclusive of justices of the peace), entailing heavy expense even though judges are generally poorly paid; besides, a very good argument can be made that, far from ensuring greater care and fairness, the plurality plan weakens the judge's individual sense of responsibility and thereby promotes inefficiency. Proposals in Parliament to change to the single-judge system, even if only in the courts of first instance, have never, however, won much support, partly because of the rootage of the existing plan in tradition, and partly, it must be confessed, because of the unwillingness of deputies and their constituents—not to mention the judges themselves—to see a retrenchment carried out in their home localities.

HOW JUDGES ARE SELECTED

Moved by regard for the principles of popular sovereignty and separation of powers, the Revolutionary reformers in 1790 made all judges elective by the people. The plan, however, did not work well, and for the same reasons chiefly that it does not work well in most of our American states today. The people did not know how to assure themselves of experience, skill, and probity in their magistrates, and the judges were drawn into questionable political con-

[1] A slight exception is afforded by the assize courts.

[2] As indicated above, a wholesome reduction of the number of courts of first instance in 1926 did not prove permanent.

nections and activities. Appointment by the executive was therefore revived, accompanied by guarantee of tenure during good behavior; and in 1804, at the hand of Napoleon, the last trace of the elective system disappeared. Proposals to go back to the elective plan have, of course, been heard during the last hundred years, and no less a person than the late M. Clemenceau has argued that, notwithstanding the safeguards mentioned below, appointment by the president of the Republic, under the usual cabinet-government plan which puts actual selection in the hands of the Minister of Justice, means political appointments and frustrates proper judicial independence. The Chamber of Deputies, indeed, actually passed a bill for popular election in 1883. Upon reconsideration, however, the deputies rescinded their action; and later proposals, even under the broadened democracy of more recent decades, have stirred only cursory and academic discussion. Neither France nor any other European nation believes it possible to obtain the best judiciary through choice by the people.[1]

TRAINING, PAY, AND TENURE

In selecting men for judicial posts, the Minister of Justice must observe not only the usual and obvious proprieties, but also the highly important rule—developed concurrently with the progressive curbing of favoritism in other branches of the civil service—that appointees shall be persons of special training and experience. Even the justice of the peace, as indicated above, must have a law diploma backed with some experience of a legal or judicial character, and must have passed a special examination. But appointees to higher judicial positions must have more than this. In Great Britain and the United States, judges of all grades are appointed (or elected) freely from the legal profession. They may have had previous judicial experience, but as a rule they have not done so. At all events, they have not pursued studies and taken examinations aimed at fitting them for judicial work as distinguished from practice at the bar; appointment to the bench comes simply as the crowning triumph of a lawyer's career. In France, the judiciary is regarded as belonging to a profession akin to, yet essentially distinct from, the profession of law—a branch, indeed, of the civil service—and, as Professor Munro remarks, the young Frenchman, when he begins to study law, decides whether he wants to be a lawyer or a judge, and plans his

[1] The closest approach to anything of the kind in France is found in the election of the non-professional judges of the commercial courts and courts of arbitration mentioned above (see p. 566, note 1). In the Swiss cantons, it should be added, judges of the lowest courts are generally elected by the people.

studies accordingly.[1] As a judge, he will have the advantage of prestige, secure tenure, and opportunity to mount by promotion toward the coveted positions at the top. In return, he is expected to prepare himself for the bench as a life career, precisely as he would prepare for engineering, medicine, or the foreign service. So prepared, he goes as a young man into some subordinate position with a local court, awaits a chance to become a public prosecutor, perhaps gets an opportunity to sit as a substitute judge, becomes a judge in a court of first instance, and, if all goes well, passes on through black-robed service in a court of appeals, and emerges in middle life or later as a red-robed *conseiller* of the Court of Cassation at Paris. Recruitment is therefore almost entirely at the lower levels, from candidates who have passed searching oral and written examinations; judges of higher rank reach their posts in nearly all instances by promotion.[2] Judges of the intermediate courts can be removed only for misconduct and only by the Court of Cassation, and the members of the latter court only by the president of the Republic. To be sure, this guarantee of tenure rests on statute only (1883), not on constitutional provision; but it has proved entirely sufficient. Contrary to the situation in Great Britain, salaries (although increased somewhat since the World War) are low—even lower than in the United States.[3] There are, however, counterbalancing advantages in the form, as has been said, of prestige, a certain amount of leisure, and fair assurance of promotion.[3] By and large, French courts and judges compare favorably in capacity, integrity, independence, and impartiality with those of any other country.[4]

[1] *The Governments of Europe* (3rd ed.), 538.

[2] Under decrees starting in 1906, lists of judges deemed worthy of promotion are prepared by a committee composed of representatives of the Court of Cassation and the Ministry of Justice, and the government may not promote any one whose name does not appear on such lists On the other hand, the mere listing of a magistrate does not of itself guarantee his advancement, and an abuse that often creeps in is the occasional deference of judges to ministers and politicians with a view to winning favorable consideration. After all, of course, the Minister of Justice, who primarily controls, is a political official. A famous play by Eugene Brieux entitled *La robe rouge* ("The Red Robe") deals with this matter of political influence in judicial promotions and with the harshness which sometimes attends French inquisitorial judicial methods.

[3] Even the general president of the Court of Cassation receives only 80,000 francs a year, less than one-eighth of the salary of the Chief Justice of the United States Supreme Court, and only one-seventeenth of that of the Lord Chief Justice of Great Britain Other stipends are in proportion

[4] The judicial system is criticized severely on the ground of lack of initiative and independence in E Faguet, *The Dread of Responsibility*, trans by E J Putnam (New York, 1914). But the charges are hardly borne out by the facts See rejoinder

SOME ASPECTS OF JUDICIAL PROCEDURE

An American watching French courts at work would be astonished, if not also shocked, by a good deal that he would see. In the handling of civil cases, he would find no jury used, most of the evidence presented in writing, technicalities playing small part, and decisions reached with more speed than he is accustomed to witness at home. More intriguing, however, would be the procedure followed in criminal cases. To begin with, he would learn that, whereas the criminal procedure of his own country and of England, sometimes termed "accusatorial," lays particular emphasis on protecting the accused against a possible miscarriage of justice, that of France, described as "inquisitorial," stresses rather the safeguarding of the rights of society. The two objectives are, of course, not incompatible; nevertheless, the way in which a trial is carried on is to no small extent determined by whether the one or the other is chiefly emphasized. The observer would find, secondly, that there is no grand jury system in France,[1] and that if an indictment is brought against a person, it will be prepared by prosecuting officers attached to a court of appeals and unanimously approved by a *chambre d'accusation*, or section of not fewer than five judges of that court, after preliminary inquiry, with often something approaching "third degree" methods, by an examining magistrate known as a *juge d'instruction*.[2] He would discover, in the next place, that when the trial starts, in an assize court, the defendant is not put under oath, and that the prosecution does not begin by outlining what it proposes to prove, but instead the president of the court opens proceedings with an *interrogatoire*, himself questioning the

in W Loubat, "Les idées de M Émile Faguet sur la justice moderne," *Rev Polit. et Parl*, May, 1912, and in comment by J W. Garner in *Amer. Polit Sci Rev*, May, 1915, p. 400. Cf. J. W. Garner, "The French Judiciary," *Yale Law Jour*, Mar., 1917, J. Perroud, "The Organization of the Courts and the Judicial Bench in France," *Jour Compar. Legis and Internat Law*, Feb, 1929, P Crabitès, "The French Civil Bench from Within," *Amer. Bar Assoc. Jour*, Nov, 1928, D C Woods, "The Efficiency of French Justice," *ibid*, Mar, 1929, M. Ploscowe, "The Career of Judges and Prosecutors in Continental Countries," *Yale Law Jour*, Dec, 1934, and F. Deák and M. Rhemstein, "Machinery of Law Administration in France and Germany," *Pa. Law Rev*, May, 1936. On the French legal profession—divided, like the English, into *avocats*, or barristers, and *avoués*, or solicitors—see P. Crabitès, "The French Bar from Within," *Amer Bar Assoc Jour*, July, 1928, reprinted in W. E. Rappard *et al*, *Source Book*, Pt. II, 120–127.

[1] It will be recalled that England's grand jury system has been abolished also. See p 338, note 1, above.

[2] That this inquiry, though thorough, is not the star-chamber ordeal sometimes pictured is indicated by the fact that in a recent year 470 out of 1,025 cases investigated were dismissed by the judges of instruction and 17 more by the *chambre d'accusation*.

accused with a view to bringing out the significant facts, and often engaging in a heated colloquy with that person, while his colleagues on the bench, the prosecutor, counsel for the defense, and witnesses look on with such equanimity as they can muster. He would, indeed, behold the presiding judge taking a vigorous hand at all stages of the trial, examining and cross-examining witnesses, the prosecutor following with such questions as he may want to ask, but with the counsel for defense entitled to ask none except through the intermediary of the presiding judge. Also, he would observe the latter dignitary (after the prosecutor and counsel for defense have had opportunity to address the court), not "charging the jury" or summing up the case, but merely submitting to the jurors a list of questions to be answered by "yes" or "no," including always the query of whether, in the event that they find the accused guilty, there have in their opinion been extenuating circumstances.[1] Next, the onlooker would note that after the jurors have retired they frequently call the presiding judge to the jury room in order to ask him what penalty he and his associates will be likely to inflict in case the jury finds this way or that—a proceeding quite out of line with Anglo-American usage, under which jurors are expected to determine guilt or innocence with only a general knowledge of the penalties which different degrees of guilt entail. And finally, it could not fail to be observed—doubtless with disapprobation—that the accused may be required to give evidence against himself, that a witness will not be excused from answering a question on the ground that to do so would incriminate him, and that witnesses are allowed to go as far as they like in offering as evidence testimony that is palpably the merest hearsay, suspicion, or opinion. It does not follow that justice is harder to get in France than in England or America; and the procedure described has some definite advantages, particularly those of discouraging pettifogging practices of counsel, preventing hung juries, and diminishing decisions turning on mere technicalities. Any intelligent person, however, can find defects in the system, and, taken as a whole, it could never be made to commend itself to people brought up on Anglo-American traditions.[2]

[1] This is a vital matter. For example, a verdict of guilty of first-degree murder having been rendered, a court will fix the penalty at death if there have been no extenuating circumstances, but otherwise at hard labor for life or a period of years.

[2] On the methods and characteristics of French criminal justice, see E. M. Sait, *Government and Politics of France*, 413–426, J. W. Garner, "Criminal Procedure in France," *Yale Law Jour.*, Feb., 1916, A. C Wright, "French Criminal Procedure," *Law Quar Rev.*, July, 1928, and Jan., 1929, and, for vivid comparisons, *Amer Law Review*, Jan.–Feb., Mar.–Apr., May–June, Sept.–Oct., 1913. The monumental work on the subject is A. Esmein, *Histoire de la procédure criminelle en France et spéciale-*

ADMINISTRATIVE LAW AND ADMINISTRATIVE COURTS

When describing judicial organization and methods in Great Britain,[1] we found it necessary to deal only with a single system, or set, of regular judicial courts. In France, Belgium, and other Continental countries, however, the court system of this character is paralleled (on the civil side, although not the criminal) by a scheme of administrative courts, distinct in form and personnel and applying a different body of law; and in concluding our survey of the French judicial establishment something must be said about these courts and the law that they enforce.

THE PROBLEM OF OFFICIAL LIABILITY:

The situation with which we are concerned arises mainly out of the thorny but inescapable problem of legal relationships between a government and its agents on the one hand and the people on the other—the problem that presents itself when, for example, a policeman or other person acting for the government quarantines a citizen's house and keeps him from his business, confiscates the issues of a newspaper alleged to be seditious, or runs down and injures an innocent bystander while in pursuit of an offender, and the citizen claims redress. In Great Britain and other English-speaking countries, a time-honored principle has it that the king (nowadays the state) can do no wrong. The purport of this is that the state cannot be sued, unless, and only in so far as, it by statute expressly submits itself to such a proceeding. A right of suit is sometimes granted, but not often in cases involving merely alleged injury inflicted by public officials upon private individuals or corporations. This does not mean that such persons are obliged meekly to submit to any injury done them, but only that they must look for reparation elsewhere than to the state—in other words, to the officials personally. In Britain or America, therefore, a person having a grievance or claim of a justiciable nature arising out of the official actions of a health officer, a policeman, or a tax-collector goes into court with a suit against such officer, and, if he wins, collects whatever damages are awarded, not from the state, but from the officer himself—if he can.[2] The

1. WHO CAN BE SUED?

ment de la procédure inquisitoire depuis le xiii^e siècle jusqu'à nos jours (Paris, 1881), of which large portions are translated by J. Simpson under the title of *History of Continental Criminal Procedure, with Special Reference to France* (Boston, 1913). The relation of the police to justice is covered in R. B. Fosdick, *European Police Systems* (New York, 1915). The subject of judicial review, having been treated in an earlier chapter, is not taken up here. See p. 434 above.

[1] Chap. xix above.

[2] The officer will not be held liable if he can show that the act on which the suit is based fell within the range of his proper discretion under existing law

proceeding is essentially as it would be if the defendant were another private individual and not a public officer at all. In France, it is otherwise. There, the state freely admits its responsibility for whatever is done by its agents in their public capacity; the plaintiff brings his action, not against the official personally, but against the state; and if he wins, his damages are recoverable from the public treasury, which of course gives him the comforting assurance that they will be paid.

2. WHERE SUITS MAY BE BROUGHT

This is one major difference between Anglo-American and Continental methods of handling the problem. But there is a second, namely, as to the courts in which such cases are heard and decided. In Great Britain and America, the plaintiff will proceed against the offending official in the ordinary tribunals, precisely as if the suit were against another private party. It is a matter of principle, and a source of pride, that public officers have no immunity from the jurisdiction of the regular courts. In France, on the other hand, a citizen with a case of the sort will carry it, not to a court of first instance or other ordinary court described above, but to one of the several administrative courts maintained exclusively for such business. Although liable, as anyone else, to be brought into the ordinary courts on matters not connected with their public functions, officers are, in all matters so connected, entirely exempt from the jurisdiction of these courts. It is deemed more compatible with the interests of public administration, while in the long run no less just to the citizen, that they—or rather the state which they serve—shall be subject to suit only in courts of a special character associated with the administrative rather than the judicial branch of the government.[1] The system was instituted in 1790 primarily to protect the administrative authorities against the ordinary courts, whose judges, though thenceforth to be elected by the people, might nevertheless prove unsympathetic toward the new reforms. Starting, however, with this intentional slant in favor of the government, the administrative courts long since reached the point where they could be regarded—as they certainly are today—as impartial and effective protectors of the citizen against arbitrary and illegal administrative actions.[2]

[1] The idea is traceable in no small degree to the Roman-law influence which permeates the country.

[2] From the time of Napoleon, this end was progressively attained by confining judicial functions to the "consultative" administration (*i e*, the Council of State and the former prefectoral councils, described below), as distinguished from the "active" administration, *e g*, prefects and mayors, and the "deliberative" administration, *e g*, departmental and communal councils.

ADMINISTRATIVE LAW

Wherever disputes growing out of the relations of public officials with private citizens have to be adjusted—and this means everywhere—there arises a body of rules according to which the liabilities of officials, the rights of citizens, and the procedures for establishing such liabilities and rights are determined—in other words, a system of administrative law. In English-speaking countries, such law is less differentiated from the ordinary law, because both are applied by the same courts, on more or less similar lines. It exists, however; and in France, where separate courts develop and apply it, it forms a vast and wholly distinct body of law. Unlike the ordinary law in that country, it is, indeed, in the main not enacted or codified law, but case law, built up by long lines of court decisions, precisely as was the common law of England, and, like most divisions of that law, ascertainable only by study of the decisions themselves. Being of this nature, it is also more flexible than the ordinary law of the statutes and codes.

THE ADMINISTRATIVE COURTS:

For a little time after the separation of administrative jurisdiction from the ordinary judicial jurisdiction, the settlement of controversies growing out of administration was left to persons actively engaged in administrative work. In 1799, however, special administrative tribunals—called "councils," but none the less truly courts—were created for the purpose; and the arrangement survives in its essentials to this day. The tribunals are of two grades—regional (superseding former prefectoral) councils at the bottom, and a *Conseil d' Etat*, or Council of State, at the top. Until 1926, there

1. REGIONAL COUNCILS

was a prefectoral council in each of the fourscore departments, composed of the prefect of the department as *ex officio* chairman and two other members appointed (as was the prefect) by the Minister of the Interior from among persons who held, or had held, public administrative positions.[1] The prefect himself was usually too busy with other things to be able to devote much time to the work of the court, but since those who heard the cases and made the decisions were also identified with the administrative services, the tribunal was, to all intents and purposes, merely an arm or branch of the administration within its particular jurisdiction. The number of cases handled throughout the country in a year frequently mounted as high as 100,000. A very large proportion, however, involved nothing more serious than

[1] In so far as the administrative courts are under the direction of any executive department at Paris, it is the Ministry of the Interior, not the Ministry of Justice.

appeals of thrifty taxpayers against their assessments, while most weightier disputes—including all turning on the validity of a decree or ordinance—were taken at once to the Council of State at Paris. Partly on this account, and partly because the poorly paid members of the councils (apart from the prefects) were commonly of a rather low order of ability, there had long been demand for a reform of the system, and even for abolition of the councils altogether; and as part of a comprehensive administrative and judicial reorganization dating from 1926, and mentioned above as affecting the courts of first instance, the departmental councils of prefecture were supplanted by a new set of 22 interdepartmental, or regional, councils, each consisting of a president and four councillors appointed by the Minister of the Interior, and each serving a group of from two to seven departments. At the same time, functions of a non-judicial nature were transferred elsewhere, leaving the new councils free to devote themselves exclusively to judicial work, with, as a rule, appeal from their decisions to the superior administrative court, the Council of State at Paris.

2 COUNCIL OF STATE

This Council of State is an able, industrious, powerful, and generally impressive body. Some of its varied functions do not concern us here, but among them are those of advising ministers on matters which they plan to deal with in orders or decrees[1] and of serving as the highest administrative court, just as the Court of Cassation serves as the court of last resort in all ordinary cases, civil and criminal. One branch, or section, composed of 39 *conseillers en service ordinaire* (appointed by the president of the Republic on advice of the council of ministers, and invariably jurists of exceptional attainment) devotes the whole of its time to this latter phase of the Council's work, hearing the thousands of appeals that come up every year from the regional councils, hearing also the large number of cases that come to it as a court of first instance, annulling decrees (even of the president of the Republic) as being *ultra vires*, irregular in form, or flowing from a misuse of power,[2] and generally safeguarding the rights and liberties of the people. Access to the court is easy and inexpensive; all that anyone having a grievance—perchance, dissatisfaction with a judgment rendered by a regional council—has

[1] Statutes sometimes require that consultation of this kind take place, though leaving the ministers free to act on or reject the advice received.

[2] The power of annulment does not extend to *actes de gouvernement, i.e.*, political, as distinguished from administrative, decrees. The former, however, are not numerous. When a decree is annulled, any person who considers that he has suffered injury under it is free to bring an action for damages.

to do in order to get attention is to present a petition, stating his case, on a stamped form; even the small fee that he pays is returned to him if a decision is given in his favor. As might be surmised, the docket tends to become congested, and complaints of delay are sometimes heard. Relief will probably be found, however, through improvement of the court's facilities (the number of members was increased as recently as 1930), rather than through limiting the kinds of cases that can be brought to it.[1]

JUSTIFICATION OF THE SYSTEM

The theoretical objections that can be raised against this remarkable system of administrative jurisprudence are obvious; some of them have already been mentioned.[2] With the administrative branch of the government sole judge of its own actions, the way would seem open for any amount of government control over the decisions rendered, for virtual irresponsibility of officials, and for encroachment in this direction and that upon popular rights and liberties. The rejoinder that can be, and is, made, not only by French apologists but by informed foreign observers, is simply that, in point of fact, these potential results do not materialize. There is criticism of the regional, as there formerly was of the prefectoral, councils, indeed, there are those who seek to cast doubt on the entire present arrangement by suggesting that, after all, the distinction between *contentions administratives* and *contentions civiles* is a subtlety and that no harm would come from sending administrative cases to the ordinary courts on the Anglo-American plan.[3] Perhaps, however, the worst that can be said is, as an eminent French political scientist has remarked, that the system, although unjustifiable in principle, has been "a valuable instrument of legal progress."[4] Certainly it protects public officials against vexatious and absurd obstacles such as are often interposed by English and American courts on grounds of mere technicality, in particular, by substituting state for personal liability, it gives them greater assurance and independence in making decisions and

[1] With one set of courts functioning for ordinary cases and another for administrative cases, and with the court of last resort in each domain entirely independent of that in the other, it becomes necessary to have some agency for settling disputes concerning jurisdiction This need was met in 1872 by creating a *Tribunal des Conflits*, or Court of Conflicts, which nowadays consists of the Minister of Justice as *ex officio* president, three judges of the Court of Cassation, three members of the Council of State, and two other persons chosen by the foregoing seven. As a matter of fact, however, there are usually not more than half a dozen disputes a year to be decided See J. Theis, "Le Tribunal des Conflits," *Rev du Droit Pub et de la Sci Polit*, July–Sept, 1932.

[2] See pp. 331–332 above.

[3] A Senate committee went on record to this effect in 1921.

[4] J. Barthélemy, *The Government of France*, 178

enforcing law. Certainly, too, it in no wise jeopardizes popular rights and liberties. Upwards of a generation ago, one of the most eminent of French jurists affirmed that the great body of case law worked out by the Council of State affords the individual "almost perfect protection against arbitrary administrative action";[1] and more recently a competent American authority has asserted, "without fear of contradiction," that in no other country of the world are the rights of private individuals so well protected against administrative abuses and the people so sure of receiving reparation for injuries sustained from such abuses.[2] This happy state of affairs is the more significant, considering that France is a country of highly centralized administration, with multitudes of national officers and functionaries who, in the absence of some positive and effective restraint, would inevitably tend to invade and override the liberties of the private citizen. The uninitiated might not expect it, but in point of fact precisely such restraint is supplied by the system of administrative law and administrative courts, more particularly the Council of State, to which all Frenchmen look with high approval as their Argus-eyed defender against official arbitrariness and oppression. Critics in England and America have in later years grown more sympathetic toward the French system, as they have come to understand it better; and in both countries definite tendencies can be observed, not only toward fuller appreciation of the administrative law which they have themselves developed, but even toward the use, in certain expanding fields, of agencies having all the essential characteristics of administrative courts.[3]

[1] L. Duguit, "The French Administrative Courts," *Polit. Sci. Quar.*, Sept., 1914, p. 393.

[2] J. W. Garner, "French Administrative Law," *Yale Law Jour*, Apr., 1924, p. 599. The advantages of the French system were first clearly expounded for Americans by F. J Goodnow, in his *Comparative Administrative Law* (New York, 1893).

[3] Good brief discussions of French administrative law and courts will be found in W. B. Munro, *The Governments of Europe* (3rd ed.), Chap. xxx, E M. Sait, *The Government and Politics of France*, Chap. xi, and F. J. Port, *Administrative Law*, Chap. vii Leading French works on the subject include H. Berthélemy, *Traité élémentaire de droit administratif* (12th ed, Paris, 1930); M. Hauriou, *Précis de droit administratif et de droit public* (11th ed., Paris, 1927), and G Jèze, *Les principes généraux de droit administratif*, 3 vols. (Paris, 1925–30). Among informing articles are those by J. W. Garner cited above, and also his "Anglo-American and Continental European Administrative Law," *New York Univ. Law Quar. Rev.*, Dec, 1929, L Duguit, "The French Administrative Courts," *Polit. Sci Quar*, Sept, 1914, and H. Berthélemy, "The Conseil d'État in France," *Jour. Compar. Legis. and Internat. Law*, Feb, 1930, reprinted in part in W. E. Rappard *et al*, *Source Book*, Pt. II, 127–131. L Duguit, *Law in the Modern State*, trans. by F. and H. Laski (New York, 1919), is also a work of prime importance Cf. S Reisenfeld, "The French System of Administrative Justice, A Model for American Law," *Boston Univ. Law Rev.*, Jan, 1938.

CHAPTER XXIX

Local Government and Administration

IF FRENCH concepts of law and habits of judicial procedure have exerted telling influence in other lands, French forms and usages of local government have left their mark no less widely and indelibly. It is customary to think of English political institutions as having been most widely studied and copied throughout the world; and so they have been with respect to parliaments, cabinets, budgets, civil services, and other aspects of government on the *national* level. On the *local* level, however, and in the tie-up between the national and the local, influence of comparable extent and significance has been mainly French. Taking over and reorienting new local institutions and procedures introduced during the Revolution, the first Napoleon imposed the resulting scheme upon Belgium, western Germany, Switzerland, Italy, Spain, and Portugal, where in most of its essentials it survives today, except as modified in Germany and Italy at the hands of Nazis and Fascists. In later times, it found its way into the Netherlands, Poland, Czechoslovakia, Yugoslavia, and Greece, and with various modifications into the Near East, Japan, Siam, and Latin America. Wherever the prefect (or some similar national agent) dominates the local scene—wherever, indeed, the major feature of local government is a high degree of coordination and control from the national capital—one is justified in suspecting that French influence has been at work, though, of course, one should not ascribe to such influence the fascist extremes of centralization witnessed today in Germany and Italy.

WORLD-WIDE SIGNIFICANCE

One thing that the student of political science soon observes is that governments are more stable at the bottom than at the top. England in the seventeenth century executed her king, abolished monarchy, suppressed the House of Lords, proclaimed a republic, and afterwards swung back to monarchy and a second chamber, with practically no disturbance of government in the counties, boroughs, and parishes. America passed from colonial status to independence, and from the Articles of Confederation to the constitution of 1789, with little perceptible effect upon town meetings and county courts. This does not mean, to be sure, that local government never changes:

CONTINUITY OF LOCAL INSTITUTIONS

once in a long while—as, for example, in Russia in 1917—revolution reaches down to, and transforms, the institutions of village and of rural community; and even the orderly processes of industrialization, urbanization, and other social change reflect themselves in gradual readjustments of local areas, authorities, and functions. By and large, however, national governments are more artificial and external, less articulated with the age-old customs and daily habits of the people, than are local governments, and therefore more likely to go down before the winds of political controversy and passion. Even the history of France illustrates the point; because, notwithstanding that the Revolution of 1789 swept away most of the inherited institutions of local government along with those of national government, the system that took their place, once worked out by the revolutionary assemblies and Napoleon, survived the long series of *coups d'état* and revolutions of the nineteenth century with only minor alterations, chiefly in the direction of somewhat increased democracy—and this notwithstanding that local and national institutions in that country have at all stages been tied so closely together that it merely invites error to contemplate one in isolation from the other.

LOCAL GOVERNMENT BEFORE THE REVOLUTION OF 1789

The political history of France in the Middle Ages and earlier modern times was largely a story of the gradual breaking down of feudalism, accompanied by the absorption of the great fiefs into the royal domain—in other words, the supplanting of nominal by actual royal power throughout the length and breadth of the country. Monarchy became absolute and remained so until 1789, and administration took on the highly centralized aspect which, with brief interruption during the great Revolution, it has retained to this day. At one time, the principal area of regional government was the province, and as late as 1789 there were still provinces with elective assemblies which levied taxes and had some control over expenditures. In the sixteenth century, however, the province was replaced for both administrative and judicial purposes by a somewhat smaller unit known as the *généralité;* and thereafter the older area lost most of its vigor and importance. Of *généralités,* there were, in 1789, 35, each in charge of a royal official known as the *intendant,* who, with his assistants, managed in the king's name all matters of justice, police, finance, and general administration. Within the *généralités* were varying numbers of smaller governmental areas known as communes, some 40,000 in all, ranging from villages with a few dozen inhabitants to the largest towns and cities.

In earlier centuries, most of these had been free to elect their own officers and otherwise manage their purely local affairs By 1789, however, such rights had commonly been lost, and although uniformity of arrangements was totally lacking, self-government had almost everywhere become a fiction. If the taxpayers continued to meet in primary assembly as of old, it was as a rule only to be told by the *intendant* what they were expected to do.[1]

THE REVOLUTIONARY EXPERIMENT

The National Assembly of 1789 turned its attention to this situation promptly and in no faltering spirit. First of all, it drew a new local-government map. After some wavering, the communes, as being historic and natural local units, were allowed to stand, with merely a certain amount of rearrangement. But the provinces and *généralités* were swept away, and the country was freshly divided into 83 approximately equal areas known as departments, each cut into *arrondissements*, or districts (534 in all), which in turn were subdivided into a total of 6,840 cantons. The ascending scale of local-government units thus became (as it is today) commune, canton, *arrondissement*, department—all arranged in perfect symmetry and, in the case of all except the commune, with deliberate intent to preserve no connection with the past. The new set of administrative counties created in Great Britain in 1888 largely followed the lines of the old historic counties.[2] But the French departments and their principal subdivisions broke completely with history and tradition, even the names given them were drawn from rivers, mountains, or other politically colorless derivations. From this, furthermore, the early revolutionary assemblies went on to install wholly novel arrangements for the management of local affairs. First, they transferred practically all powers (subject to certain financial limitations) from agents of the central government to the local units themselves, carrying the country almost overnight from an extremely centralized to an equally decentralized system. Then they gave vent to their ardently democratic impulses by providing departments, *arrondissements*, and communes with governing councils and other authorities elected by manhood suffrage. Never, unless in Soviet Russia (and there on quite different lines), was an entrenched system of local government so quickly and completely uprooted in favor of one of different aspect.[3]

[1] For a fuller account of local government before the Revolution, see *Cambridge Modern History*, VIII, 37–46.

[2] See p. 351 above.

[3] For lists of the original departments and *arrondissements*, and of these divisions as modified in later days, see R Le Conte, "Les divisions territoriales de la France avant et depuis 1789," *Rev du Droit Pub. et de la Sci Polit.*, July–Sept., 1926

THE NAPOLEONIC REACTION

Events soon showed that the reformers had travelled too fast and too far. Habituated to paternalism and centralization, the people proved unequal to the responsibilities so unexpectedly thrust upon them. Abuses of many kinds arose—irregularities in the election of local councils, ill-advised and unjust taxation, extravagance and corruption in official circles, inefficiency in police and other administration. Even without the impetus supplied by foreign wars, obviously requiring unity and strong government throughout the country, there would have been a reaction. Upon the reestablishment of some semblance of public order after the fall of Robespierre in 1794, supervision from Paris was revived through the agency of "revolutionary committees" set up to watch over the locally elected councils and officials; and in 1795 control was further tightened up in the hands of the National Directory. Then came Napoleon. From his point of view, orderly administration was more important than local autonomy; and from first to last his policy looked to the revival of something like the old Bourbon centralization of government, even though on more enlightened lines and with incomparably better results. To be sure, the new sets of local-government areas devised by the revolutionary leaders were allowed to stand (the canton becoming a judicial district), and with them the councils with which those areas had been endowed. All council members were, however, in future to be named by the government at Paris, acting directly or through its local representatives; likewise all mayors of communes, subprefects of *arrondissements*, and prefects of departments, with their assistants. Popular election, in short, was completely discarded, just as it had been in the case of the judiciary. Mention of prefects brings to view Napoleon's own principal contribution to the mechanism—an official who became, in each department, the fullest embodiment of central authority, an agent whose orders and instructions thenceforth confronted the local councils and officials at every turn.[1] Of decentralization and democracy in local government, the First Consul and later Emperor left hardly a trace.

DEVELOPMENTS SINCE NAPOLEON: CENTRALIZATION CONTINUED

As was remarked above, the tenacity of local institutions finds one of its best illustrations in the persistence of the Napoleonic system under kingship, empire, and republic alike to our own day. There have, of course, been changes, including some of considerable significance as recently as 1926.[2] Nevertheless, if the Corsican were to walk the earth again, he would

[1] The name is Roman (*prefectus urbi*), and its use illustrates the significant parallel which existed between the Napoleonic and Roman administrative systems

[2] See p 600 below.

find no difficulty in recognizing his handiwork. One will not be surprised to learn that the principal modifications date from two periods of liberalism in the country's political history—the Orleanist monarchy and Second Republic, and the Third Republic. In the first of these, the councils of the departments, *arrondissements*, and communes once more became elective, as a natural consequence of the revolution of 1830, reenforced by interest in popular government stirred by de Tocqueville's studies of American democracy.[1] The local suffrage, too, although at first restricted, was placed on a manhood basis under the Second Republic. Under the Second Empire (1852–70), such slight steps as had been taken in the direction of decentralization were retraced, and popular election, although maintained in form, became a farce. With the country once more a republic after 1870, and moving steadily in the direction of democracy in its national government, the way was again open for change. There was, however, no disposition to sweep away the great imperial legacy. Like the law codes and the pyramided courts, it had woven itself into the frame and texture of the national life. In response to growing demand for larger freedom for the communes (after all, the only local-government areas having deeply rooted traditions and an abiding sense of common local interest), a law of 1882 gave their councils the right to elect mayors and *adjoints* (assistants); and two years afterwards a monumental *Loi sur l'Organisation Municipale* became the code upon which, with relatively slight modifications, the government of villages, towns, and cities has been conducted to this day. Other measures from time to time, notably in 1902 and 1926, cautiously increased the powers of departments and more particularly of communes, the latter gaining a good deal of additional leeway in the once severely restricted domains of finance and public utilities.[2] On the other hand, the fiscal difficulties into which numerous local areas fell in the period of post-World War economic crisis, compelled such areas to turn to the state for lavish grants-in-aid, leading, as might have been expected, to a sharp revival of central control over local, especially municipal, affairs.[3] The popular basis of government locally has been widened no farther since 1882 (for

[1] De Tocqueville's *Democracy in America*, based on observations made in the United States in 1831, was published at Paris in 1835

[2] Broader powers in respect to public ownership and operation of utilities, plainly intended to be conferred on communes in 1926, were, however, largely nullified by a ruling of the Council of State that the new legislation had the effect only of fixing the conditions under which powers previously possessed should be exercised

[3] W. R. Sharp, "The Changing State-Local Financial Picture in France," *Nat. Munic. Rev.*, Sept., 1936, and cf. the same author's discussion in W. Anderson (ed.), *Local Government in Europe*, pp. 187–195.

example, despite growing demand, especially in the cities, women have not been enfranchised); and the country still presents the spectacle of a nation steadfastly democratic in spirit and definitely so in its arrangements for national government, yet giving less scope to local autonomy than does any other state of Western Europe in which political institutions of a popular nature survive. Certainly, as compared with the English, the French are still, in their local affairs, a governed, rather than a self-governing, people.

COROLLARIES OF CENTRALIZATION:

From this general fact flow two or three important corollaries. The first is the high degree of integration of French government considered as a whole. Local government is nowhere a thing entirely apart. national government (or state government in such countries as Canada, Switzerland, and the United States) impinges upon and more or less envelops it; in Fascist Italy and Nazi Germany, it is so woven into the totalitarian fabric as to have no separate existence at all.[1] Even in the case of France, as observed above, it is almost misleading to talk about *local* government. Not only are there no constitutionally separate spheres of governmental authority; there is really only *one* government, functioning equally through ministers and Parliament at Paris and prefects and councils throughout the country at large. Local areas have only such governing organs, local bodies only such powers, as are given them by national law. All of the threads are gathered ultimately in the hands of the central government at Paris. More than this, the entire mechanism of departments, *arrondissements*, and communes heads up in a single ministry at the capital, *i.e.*, Interior—markedly in contrast with the situation in Great Britain, where, as we have seen, not only is central control less penetrating, but that which exists is exercised, in different fields, by upwards of a dozen separate establishments in Whitehall.[2]

1. INTEGRATION

2. UNIFORMITY

A second inevitable corollary is the rigid uniformity of local-government arrangements throughout the length and breadth of the country. Wherever one goes—to Normandy or Brittany, to Auvergne or Languedoc—one finds the same elective councils, the same prefects and mayors, the same school systems and police, the same laws and taxes. Some departments are agricultural and some industrial, some densely populated and some sparsely, some maritime and others inland; it does not matter—all have governments exactly alike. Still more remarkable, some 38,000 communes, differing sharply among themselves in

[1] See pp 783–789, 853–854 below.

[2] See p. 365 above.

population, economic interest, and social structure, have governments of a pattern, with larger councils and more numerous *adjoints* and other officials in case of the more populous ones, but with otherwise no noticeable distinction. To be sure, France is better adapted to this sort of thing than are some other countries: the preponderance of agriculture makes for economic solidarity; the population grows slowly and is exceptionally homogeneous racially and linguistically; and there is always the flair for symmetry and the tradition of standardization imposed from Paris. But the dead level to which all forms of local government are reduced, and the total absence of experimentation with novelties like commission and manager plans, amazes the observer, particularly if from our own country. "Much is said in the United States," remarks an American writer, "about the impossibility of providing, in a general charter law, for the satisfactory administration of all classes of cities. How then would the legislators of an American state regard a proposal to establish a uniform framework of administration applicable not only to all cities of whatsoever size, but to towns and villages as well? This is, nevertheless, what the French municipal code has done, and with no very evil results." [1] Uniformity applies, moreover, not only to structural arrangements, but also to functions and powers. And at this point, results have been less happy. One of the principal defects of French local government today is, for example, the identical system of taxation imposed on great cities, industrial areas, and little rural communes.

3. DUAL FUNCTION OF LOCAL AREAS AND OFFICIALS

Departments, *arrondissements*, and other local areas manifestly serve two purposes. On the one hand, they are units for the enforcement of laws, the administration of justice, and the collection of taxes by the national government. In this rôle, they are like judicial districts or internal revenue districts in our own country. On the other hand, they are areas with governments of their own—with locally elected councils, officers to enforce council ordinances, separate budgets, separate police establishments, schools, health services, and what not. To be sure, these governments have only cautiously bestowed, and at most points decidedly restricted, authority; and some of the officials who take a leading part in carrying them on, e.g., the prefects, are on the scene, partly, if not primarily, as agents commissioned and instructed from Paris. There is work to be done, however, with which Paris concerns itself only now and then, or not at all; and while the outstanding fact is the blanketing

[1] W. B. Munro, *The Government of European Cities*, pp. 14–15.

of the country with laws, regulations, decisions, instructions, and supervision from the banks of the Seine, it is not to be overlooked that a prefect, for example, is at the same time spokesman and agent of the Ministry of the Interior and head of a government which is quite as truly a going concern as that of an English county or an American city.

AREAS OF LOCAL GOVERNMENT

Of the four sets of local divisions which one finds in France—departments, *arrondissements*, cantons, and communes—only the first and last have genuine political character and individuality. The *arrondissement* is an area of routine administration, and to some extent of justice; and since 1927 it has again been the basic unit for representation in the Chamber of Deputies.[1] The canton exists primarily for judicial and electoral purposes. Departments and communes, however, are something more than mere geographical conveniences of the national government. To be sure, they have no inherent rights and powers, no attributes and privileges which that government cannot take away, they can be enlarged or diminished by its fiat, or blotted out altogether.[2] Nevertheless, they have "corporate personality"; they can sue and be sued, own property, and make contracts. And they are areas in which ordinances are enacted, taxes levied, policies adopted—in short, areas in which government, in the full meaning of the term, is carried on.

THE DEPARTMENT

Of departments, there have been from their beginning in 1790 four score and more, the number having been brought to the present figure, 90, in 1919 by the addition of three which were formed from the territory recovered from Germany.[3] In size, they vary from the department of the Seine, with 185 square miles, to that of Gironde, with 4,140, and in population from Hautes-Alpes with less than 100,000 to the Seine with some 5,000,000.[4] Because it contains the national capital and metropolis, the department of the Seine has a form of organization peculiar to itself. All of the others, however, are of one pattern.

THE PREFECT

At the head of each department is the prefect, nominated by the Minister of the Interior and appointed by presidential decree; and in the person of this busy and

[1] See p. 502 above.

[2] It is not to be overlooked, however, that the same is true of English counties, boroughs, and districts

[3] The number includes the department of Corsica, but not three others organized in Algeria on similar lines

[4] The average area is about 2,000 square miles, and the average population about half a million.

powerful official the shadow of Napoleon still walks in every corner of the land. Appointed for no fixed term—since 1934, from subordinate career officials in the national civil service (usually subprefects or general secretaries of prefecture)—a prefect may advance from one to another of the three established grades, moving from this department to that, with generous increases of salary, or, falling out of favor with the authorities at Paris, he may be demoted, placed on an "unattached" list (which leaves him with no prefectoral duties to perform, but with the consolation of continuing to draw a salary), or removed altogether. There are few outright dismissals. But, the prime requirement of a prefect being that he shall serve the authorities at Paris loyally, tactfully, and effectively, and in a political as well as an administrative way, a Minister of the Interior will rarely hesitate to dispense with any of the number who show too little spirit in carrying out the government's will.

HIS DUAL RÔLE. A prefect must indeed be a man of parts, one will search far for a public official on a similar level of whom more is expected. To him above all others it falls to play the dual rôle of local agent of a vigorous central government and executive head of a government of a local area. In the former capacity, he appoints long lists of locally employed members of the national civil service—tax-collectors, school-teachers, postmasters and postal clerks, sanitary officers, and the like, supervises a bewildering variety of public services (some on a national, some on a local or departmental, basis), *e.g.*, education, health, poor relief, main highways, police, social insurance, and census-taking; transmits voluminous reports to the Minister of the Interior and to other authorities at Paris concerned with particular services; publishes and enforces the never-ending regulations (statutes, decrees, etc.) pouring forth from the capital; approves the budgets of the larger communes and keeps a watchful eye on communal affairs generally; and issues many regulatory edicts (known as *arrêtés*) on his own account. Within his jurisdiction, he is at the same time eye, ear, and mouthpiece of the central government. Formerly, nearly all of his work was done under detailed instructions from the capital. Of late, he has been allowed a good deal more discretion; and significant decentralizing decrees of 1926 listed numerous matters on which regulations were thenceforth to be made, not by decree from Paris, but by prefectoral *arrêtés*. Even yet, however, he must conform to great numbers of nation-wide regulations, as well as to instructions issued in particular situations. In selecting civil servants, for example, he must comply with the terms of a general rule requiring competi-

tive examinations and guaranteeing security of tenure. But the prefect is also the executive head of a partly autonomous divisional government, precisely as is the governor of an American state or the mayor of a city. In this capacity, it falls to him to appoint employees of the department as distinguished from the nation, to prepare business for consideration by the elective department council, to carry out the council's ordinances, to hear and adjust complaints, to supervise elections, and generally to represent the department and its people in their relations with neighboring departments and with the authorities at Paris.

DIFFICULTIES AND EMBARRASSMENTS

The prefect is often referred to as the pivot of French administration. It is the nature of a pivot to be subjected to strain from many directions, and such is the prefect's lot. The office took form in a period when Napoleon's word was law and all that was required was to enforce it. But when it was carried over into a republican régime, a different situation arose. From an Anglo-Saxon point of view, it should have disappeared altogether; no English-speaking country has anything like it. But such was not the course of events in France; and nowadays the prefect, essentially a little Napoleon in his department, finds himself functioning under a cross-fire of democratic motivations and policies from which arise plenty of embarrassment and difficulty. To him it falls as of yore, not only to dispense local offices (though under more restraint from civil service rules) and control local legislation, but to enforce unpopular regulations and administer burdensome taxes. In doing so, he can hardly fail to displease local groups and interests. In the old days, he need not worry over-much; he had Napoleon—or some other autocrat—to back him up. In these times, however, he is not unlikely to find the department's senators and deputies, ever with their ears to the ground in their constituencies, dogging the steps of the Minister of the Interior at Paris in an effort to get him transferred or removed. Perhaps they will succeed. Yet no hope lies in catering too freely to opinions and interests in the department, for this would mean a charge of disloyalty to the central government, which would be equally fatal. "Today," writes an eminent French authority, "placed between universal suffrage, which really rules, and the central power, which wishes to govern, he [the prefect] is between the anvil and the hammer. Since he is concerned in everything, he concentrates in his own person the perpetual conflict of authority and freedom. . . . He is at once the agent of the government, the tool of the party, and the representative of the area which he administers. Yet he must

remain impartial, foresee difficulties and disputes, and remove or mitigate them; conduct affairs easily and quickly, avoid giving offense, show the greatest discretion, prudence, and reserve, and yet be always cheerful, open, and a good fellow." [1] Small wonder that a prefect spends most of his days walking a tight-rope of expediency! Small wonder, too, that he has to be not only an administrator but a politician! The ministers whom he serves are politicians, and by long tradition they look to him to use his patronage and influence in their behalf and in support of those who stand behind them in the Chamber. Deliberate employment of office-holders to promote partisan ends is in no wise peculiar to France; there is plenty of it in the United States. But the French prefect as a wire-pulling civil servant is hardly surpassed in any country west of the Balkans.

THE PREFECTORAL STAFF

Visiting the chief town of a department, one will hardly fail to observe a well-kept building before which the tri-color is flying, and bearing in large letters the words *Hôtel de la Préfecture*. Here will be found not only the official residence of the prefect, but the meeting-place of the general council and the offices of a general secretary of prefecture, a *chef de cabinet* (private secretary), and varying numbers of chiefs in charge of administrative bureaus or divisions. Under a parliamentary statute of 1920 laying down general rules for recruiting, paying, promoting, and disciplining prefectoral employees, every department throughout the country now enjoys the benefits of a personnel system based on competitive examination and security of tenure. Prior to 1926 (as explained in the preceding chapter), a conspicuous feature of department machinery was a *conseil de préfecture*, or prefectoral council, consisting of the prefect and two other appointed persons—a body which, in addition to auditing accounts and performing other consultative and administrative functions, served as the administrative court of first instance. In the year mentioned, however, these councils were abolished, their functions as administrative tribunals being transferred to a new set of interdepartmental or regional councils, and their responsibilities of a non-judicial nature redistributed. Various kinds of *arrêtés*, for example, which formerly could be issued only by the prefect in conjunction with the council now emanate from the prefect alone, with or without express authorization from Paris.

THE GENERAL COUNCIL

Completing the mechanism of department government is the *conseil général*, or general council, consisting of unpaid members elected by

[1] G. Hanotaux, *L'énergie française* (Paris, 1902), 81.

manhood suffrage[1] for terms of six years, one-half retiring triennially. Each canton is entitled to one councillor, and since the number of cantons in the departments is far from uniform, councils vary from 17 to as high as 67 members, often including one or more persons who are also senators or deputies.[2] Two regular council meetings are held each year—a spring meeting, usually lasting less than two weeks, and a summer meeting, for consideration of the budget and apportionment of direct taxes among the *arrondissements*, sometimes lasting longer. Special meetings may be called by the prefect, and between sessions a committee of from four to seven members meets at least once a month and transacts certain kinds of business in the council's name. As is true also of communal councillors, members are not salaried, but usually vote themselves allowances sufficient to reimburse them for any expenses incurred.

From what has been said about the prefectoral organization in the department, it will readily be deduced that the general council has no such power or importance as attaches to a county council in England. It is, to be sure, in a sense a departmental legislature; in fact, the net effect of the decrees of 1926 was to give it somewhat more of this character than before. It examines the accounts of the prefect, adopts the annual budget, apportions taxes among the *arrondissements*, provides for the maintenance of public buildings and highways, and adopts ordinances of various kinds. All of this it does, however, under strict limitations. So comprehensive are the regulations laid down at Paris and by the prefect that comparatively little room for action remains; not much can be taken up except on the prefect's initiative; and nearly everything that is done is subject to disallowance by the central government, which can also dissolve a council at any time. The decrees of 1926 narrowed the grounds on which acts of the councils may be disallowed (in general, tending to limit them to illegality, as distinguished from mere inexpediency), and in other ways appreciably relaxed central control. A French writer has, indeed, affirmed that the councils are at last beginning to take on the nature, as well as the appearance, of local parliaments.[3] As long, however, as their position remains fundamentally as described above, they cannot be looked upon as legislative bodies possessing genuine independence and virility.

[1] It will be recalled that suffrage requirements are identical for all national and local elections, and the same is true of the regulations governing the conduct of elections. On the election of department councils, see W. R. Sharp, in W. Anderson (ed.), *Local Government in Europe*, 121–126. Department elections are always held in October, communal elections in May.

[2] For special arrangements in the department of the Seine, see p. 596 below.

[3] R. Bonnard, in *Rev. du Droit Pub. et de la Sci. Polit.*, Apr.–June, 1927, p. 278.

"ARRONDISSEMENTS" AND CANTONS

Departments are divided into *arrondissements* or districts, and these in turn into cantons. Neither unit, however, is in any sense an area of self-government, neither has corporate personality, owns property, or has a budget.[1] Of *arrondissements*, there at one time were no fewer than 385. The number was gradually reduced, and in 1926 as many as 107, situated in 79 different departments, were erased from the map, although offended local interests later induced Parliament to revive substantially all of them; so that the present number is 279. In each there is a subprefect, appointed from Paris, as a chief administrator, and a council elected from the cantons for terms of six years. The council, however, has practically nothing to do except to form a segment of the electoral college which chooses the department's senators. And the subprefects, although endowed in 1926 with certain powers transferred from the prefects, are still almost as useless as in days when the Chamber of Deputies repeatedly voted to suppress them altogether. Many people interested in local-government reform would be glad to see the *arrondissement* dropped entirely out of the system, save perhaps as a district for electing deputies; and even this use would disappear if proportional representation were to be revived. As matters stand, the area, however, is a prime field for political manipulation and intrigue, and this alone bids fair to keep it on the map for a good while to come.

The canton is the area from which members of *arrondissement* and department councils are elected, and in which (singly or in combination) justices of the peace carry on their work. To some extent, it is an administrative unit as well, chiefly in connection with tax-collection, highway inspection, and military recruiting. It has, however, no council; nor has it need for one. The present number is 3,027.

THE COMMUNE: GENERAL ASPECTS

Of a far different order is the commune. To begin with, it alone among French local-government units is rooted in the country's remoter past. By law of 1789, all local areas having separate identity (some 44,000 in number) were recognized as communes; and although in later days many have been absorbed by others and some new ones have been created, a large proportion of those now existing have a history stretching back through several centuries. Furthermore, the commune not only is, like the department, a legal person, capable of suing and being sued, making contracts, and acquiring property,

[1] Their artificiality is illustrated by the fact that all are designated, not by name, but merely by number.

but it has more control over its own affairs, petty though they often are, than has any other area. Every square foot of France is included in some one of the 38,104 communes officially listed in 1939.[1] Some are of considerable extent; some consist of but a few acres. Some are large cities, *e.g.*, Marseilles, Lyons, Bordeaux, indeed Paris itself; many are less populous pieces of territory, with only small towns or even none at all; some 400, indeed, are hamlets with fewer than 50 people.[2] The extraordinary thing is that, with the exception of Paris and Lyons, all—whether urban or rural—have precisely the same form of government, in accordance with the *Loi sur l'Organisation Municipale*, or municipal code, of 1884 mentioned above. Whether the population be a hundred or a hundred thousand, there is the same elected council, the same mayor and assistants, essentially the same staff of "permanent" administrators. To be sure, the size of the council and the number of administrative officials vary with the number of inhabitants, and a certain amount of additional machinery exists in a few of the larger municipalities. But to all intents and purposes, communal government is of the same pattern wherever found, and an observer who has familiarized himself with it in one place knows what it will be in every other. To be sure, the same is true of English borough government. English boroughs, however, have at least the common physical basis of a strictly urban population; and in the United States, not even cities show any approach to a single standardized form of government and administration.

THE COMMUNAL COUNCIL

Every commune has a council of from 10 to 36 members,[3] according to population—elected on a general ticket if the number of inhabitants is under 10,000, otherwise usually by wards returning at least four members apiece. In any event, all are chosen at the same time, for a term of formerly four, but since 1929 six, years, and under suffrage arrangements identical with those applying in all other French elections.[4] There are independent candidacies, but in general the elec-

[1] The number is smaller than a hundred years ago, but of late has tended to increase. In 1911, it was 36,241. The number of corresponding units in Germany in 1925 was 63,556.

[2] Some 22,000 have fewer than 500 inhabitants; about 31,000, fewer than 1,000, not more than 800 have over 5,000.

[3] Except that in Paris there are 90 and in Lyons 57. The regular scale calls for 10 members in communes of under 500 people and 36 in those of over 60,000.

[4] There is especially strong demand for woman suffrage in communal elections, and it will no doubt be introduced whenever women are enfranchised at all. In the Paris elections of 1925, 10 Communist women were chosen to the council. The courts, however, refused them admission on the ground that female candidacies were illegal.

tions run on party lines, with the Socialists forcing the issue in the larger cities very much as Labor, in later years, has done in Great Britain.[1] English and American municipal councils commonly meet frequently, sometimes weekly, but even in the largest municipalities French councils hold only four regular sessions a year. Each meeting is likely to last, however, several days; that of May, devoted primarily to the budget, has a maximum legal limit of six weeks; and special sessions, convoked by the prefect, subprefect, or mayor, sometimes become necessary.

In Great Britain, as we have seen, the council is in a very true sense the government of the municipality, subject of course to restriction by national law and by national administrative authority. The American municipal council (except in commission-governed cities) is relatively weak, because of the separation of powers. The French council stands between the two, but nearer the American, not only because of some separation of powers, but mainly because of the large amount of control from Paris wielded through the prefect and other local agents of the central administration. To be sure, the municipal code is generous in its grants of authority. The council, it says, "regulates by its deliberations the affairs of the commune." To be sure, too, there are a good many matters of purely local concern, *e.g.*, streets, parks, water supply, and fire protection, which the council—more properly, the council and mayor—may manage quite independently. But in such important domains as finance, police, and education, the initiative lies largely or wholly elsewhere —or if not necessarily the initiative, at all events (as in finance) a substantially absolute power of veto; on many matters, *e.g.*, the purchase or sale of property, no decision can be made effective until assented to by the prefect or subprefect, the department council, or some other higher authority; many ordinances are subject to suspension or annulment by the prefect or subprefect; every communal budget must be approved by the prefect or subprefect (depending on its amount); and in extreme cases the council itself may be dissolved by presidential decree. Under ordinary circumstances, a prudent council will carry along its allotted share of the work of the commune with little interference from above; not infrequently, its opinion will be sought by the central authorities before they decide on a policy affecting the interests of those whom it repre-

[1] For a diverting account of a council election in the capital, see R. C. Brooks, "Paris Gayly Chooses a Council," *Nat. Munic. Rev.*, Sept., 1925. Cf. article by R. K. Gooch, *ibid.*, June, 1930

sents. But the councillors can never afford to forget that they are only a cog in a vast tightly-geared mechanism of government and administration operated, not from the *mairie*, but from pulsating office-buildings on the banks of the Seine.

THE MAYOR AND ASSISTANTS

A newly elected council designates from among its members one, usually more experienced than the rest, to serve as *maire* (mayor), and from one to 12 others (according to the commune's population [1]) to act as *adjoints*, or mayor's assistants, during the ensuing six years. This does not have the effect of removing the persons selected from the council; for although there is a trifle more separation of powers than in England, the principle is not carried so far as to prevent the mayor, *adjoints*, and ordinary councillors from sitting together and transacting business as one body, with the mayor presiding. Neither mayor nor assistants receive salaries. The former may, however, each year be voted an allowance for expenses; and in larger communes, where, notwithstanding a great deal of aid from a full-time *sécrétaire de mairie*, or city clerk, most of his time must be devoted to public duties, he may through this guise be given a substantial stipend. Like the prefect, the mayor occupies a dual position. Although no longer appointed by the central government, he acts as its agent in the commune, promulgating decrees passed along to him by the prefect and subprefect, issuing *arrêtés* or orders, and supervising census-taking, preparation of the electoral lists, enforcement of military service, and other activities with which the national government is directly concerned; and for remissness in these duties he may be suspended by the prefect or Minister of the Interior, and even removed by the president of the Republic. On the other hand, he acts as executive head of the commune, appointing administrative officials (in accordance with a merit code applying to all communes), carrying out local ordinances, issuing ordinances of his own within prescribed limitations, preparing the budget for inspection by the prefect or subprefect and adoption by the council, supervising the awarding of contracts, and generally promoting communal interests. Endowed with few of the independent powers, *e.g.*, veto, which an American mayor possesses (under a mayor-council form of government), he nevertheless is no such figure-head as the mayor of an English borough; in a large municipality, he is indeed an official of prime importance—if for no other reason, because he has the weighty political rôle of head of the department of

[1] By exception, in Lyons, 17.

police.[1] In many instances, mayors are reelected as long as they are willing to serve, ex-Premier Edouard Herriot, for example, has been mayor of Lyons for nearly 35 years—notwithstanding that he has also been a member of the Chamber of Deputies during the whole of the time, a minister in several cabinets, and three times prime minister.[2] Frequently, too, they add to their official dignity the prestige and influence conferred by local (and occasionally, as in the case of Herriot, national) leadership of their parties. All in all, "France has had more great mayors than prime ministers."[3]

THE PERMANENT CIVIL SERVICE

Like the mayor, the assistants are not professional administrators. To be sure, the administrative work of the commune is parcelled out among departments equal in number to the assistants, and one of the latter is placed in nominal charge of each (public works, sanitation, fire protection, and so on), the mayor himself (in all but the few instances indicated above) retaining direct responsibility for the department of police—a branch of administrative jurisdiction which, under French usage, includes not only the maintenance of law and order, but the enforcement of public health regulations, the supervision of industrial establishments, and many similar activities. But the assistants merely supervise, on a part-time basis, and the actual day-to-day work is done by full-time, permanent, paid officials and employees appointed by the mayor.[4] Here again, as in the departments, one finds civil service arrangements of a generally satisfactory character. Except in the case of laborers, municipal employees are appointed initially on the basis of competitive written (or written and oral) examinations; appointments are probationary for a period of from six months to a year, promotion boards prepare priority lists for advancement in rank and salary; and influential staff associations (*syndicats*) have brought about exceptionally effective arrangements for protection of employees against unfair treatment. One would not be so naive as to suppose that politics and personal favoritism have been driven completely from the system. But the situation—improved first in larger municipalities like Bordeaux, and

[1] Except in Paris, Lyons, Marseilles, and a few other places, where the police establishment is under direct control of the national government. Even in communes where the establishment is under the mayor, the chief police officer, the *commissaire de police*, is appointed by the Minister of the Interior, and of course the prefect always has supervisory authority.

[2] As a rule, as many as 50, and sometimes as many as 80, mayors will be found in the Chamber of Deputies.

[3] R. Valeur, in R. L. Buell (ed.), *op. cit.*, 358.

[4] Except, as pointed out above, in the case of the *commissaire de police*. As in Great Britain, administrative officials are in no case chosen by popular vote.

later taken in hand uniformly throughout the country—is altogether different from what it was a generation ago; and it is the judgment of an American scholar who has studied conditions at first hand that, "all things considered, the professional quality of the French municipal service compares favorably with that of the better-governed American city." [1]

THE GOVERNMENT OF PARIS

Most great national capitals are governed under some more or less special régime, and Paris is no exception. The municipal law of 1884 does not apply, and the city, while technically a commune, has different officers and different powers from any other French municipality. The reasons for excepting it from a system otherwise nation-wide are not difficult to discover. In the first place, it is many times as populous as any other city in the Republic. In the second place, its people are, at least by tradition, exceptionally volatile in political matters. Throughout modern times, and especially since 1789, it has been a fount of unsettling influences, the point at which revolutions, in long succession, have had their beginning. Protection of the nation against subversive forces and influences seems to require that the central government shall have special means of control over the capital's affairs. Furthermore, the city is filled with buildings, monuments, and other national properties, the safety of which is a matter of concern to the people of the entire country.

The laws under which the metropolis is governed date from 1837, 1867, and 1871. The first two defined the powers and functions of the prefects; the last regulated the organization of the council. There is no mayor of the city as a whole. Instead, the chief executive officers are two coördinate prefects—the prefect of the Seine and the prefect of police. Both are appointed by the president of the Republic; both can be removed by him at any time; both are directly responsible to the Minister of the Interior. Both, it must be observed further, are prefects of the Seine *département*, which includes not only the city of Paris, but a considerable amount of surrounding

[1] W. R. Sharp, in W. Anderson (ed.), *Local Government in Europe*, 163. The best available account of the service will be found in pp. 155–164 of this same book. Cf. H. M. Skelbourne, "University Training of Municipal Officials in France," *Nat. Munic. Rev.*, Dec., 1928.

The most up-to-date and otherwise adequate treatment of the government of French communes generally is W. R. Sharp, in W. Anderson (ed.), *op. cit.*, 141–187. W. B. Munro, *The Government of European Cities*, Chap. i, is less recent but in other respects excellent. Standard French works include L. Morgand, *La loi municipale*, 2 vols. (10th ed., Paris, 1933), M. Leroy, *La ville française; institutions et libertés locales* (Paris, 1927); and R. Maspétial, *L'organisation municipale* (Paris, 1934). Liberal portions of the municipal code of 1884 as revised to 1937 are presented, in English translation, in W. Anderson (ed.), *op. cit.*, pp. 202–217.

country.[1] Hence, together they have all of the powers and functions belonging to a prefect in any department and, in Paris, those as well that would be possessed by the mayor if there were one. Among numerous other duties, the prefect of the Seine supervises the general administration of the city's affairs as carried on in the 20 *arrondissements*, or wards—subdivisions which have a mayor (to all intents and purposes, a subprefect), a group of *adjoints*, and permanent administrative staffs (but no elective councils), on the analogy of the ordinary communes. The prefect of police has independent control (subject only to the Minister of the Interior) of all police organization and activities.

The municipal council consists of 80 members elected by popular vote, in single-member districts, for a term of four years. In organization, sessions, and procedure, it is not notably different from an ordinary communal council, although it occasionally sits with 21 representatives of the two suburban *arrondissements* of Saint-Denis and Sceaux to form the council of the Seine department. Like any communal council, it votes the municipal budget; and it has some other important powers. It, however, has scant control over administrative activities. Such control—the more effective for being wielded at close range—emanates, not from the Hôtel de Ville where the council sits, but from another structure a few blocks distant which houses the Ministry of the Interior. Many Parisians consider that their city ought to have a larger amount of self-government. Such "home rule" sentiment, however, stirs no response in a Parliament drawn mainly from the somewhat jealous, if not suspicious, provinces.[2]

A SYSTEM BOTH CRITICIZED AND DEFENDED

For fifty years, discussions looking to the improvement of government in France have centered largely around three main topics. One is the system of parliamentary elections; a second, the rôle of the national president; a third, the scheme of local government and administration. The plan of local government outlined in the foregoing pages is criticized on many grounds, among them (1) that it sprang from imperial bureaucracy and is out of keeping with the democratic character of the French people and of their national

[1] The jurisdiction of the prefect of police, indeed, includes some portions of the adjacent department of Seine-et-Oise

[2] For fuller treatment of the subject, see W R Sharp, in W Anderson (ed.), *Local Government in Europe*, 179–187, and W. B Munro, *The Government of European Cities*, 91–108 Cf A. Guérard, *L'avenir de Paris* (Paris, 1929).

institutions;[1] (2) that it operates to give the central authorities arbitrary and altogether excessive control over affairs and interests of a purely local nature; (3) that it stifles local initiative and frustrates a healthy provincial life; (4) that it transmits to local government something of the same instability that characterizes ministerial régimes at Paris; (5) that it involves an excessive number of local-government areas, and therefore a burdensome multiplicity of functionaries; (6) that it gives the national government too many agents through whom to influence the voters in parliamentary elections; and (7) that it overtaxes not only the ministries at Paris but Parliament as well, resulting in neglect of large national concerns, while at the same time producing intolerable delays in the conduct of departmental and communal affairs. Counter-arguments are, of course, not wanting, such as (1) that close supervision by the central government is necessary to protect the taxpayers against tendencies to extravagance (which no one can fail to recognize) on the part of the local—especially the communal—councils; (2) that the central government must rely heavily upon the local authorities for the execution of national laws, and hence must be in a position to control them; and (3) that while the people have been told by philosophers and reformers, *e.g.*, de Tocqueville and Taine, that they ought to want, and to have, larger control of their local affairs, they have no such dislike of being governed by authorities not of their choosing as exists in England and America, and have evinced no strong desire for change.[2] There are categorical denials, too, that the number of officials is excessive; and as for political pressure from Paris, it is not difficult to show that, while still a reality, it is decreasing. If further reasons why the system has persisted were desired, one could cite (1) the vested interest of the great body of officials and employees, a mighty bureaucracy both holding and enjoying power; (2) the disposition of ministers and deputies to cling to such diminishing patronage as the present arrangements afford; (3) the psychological effect of the tradition that every political régime in France is on trial, and that those responsible for its preservation must, as a matter of ordinary precaution, dominate and control the entire administration of the country from the center; and (4) the total inability of the critics to agree upon any single, coherent program of reform.

[1] "We have," said a former president, M. Deschanel, "a republic at the top, the empire at the base. We must put the republic everywhere."

[2] The French attitude illustrates the regrettable soundness of Professor Graham Wallas' observation that "democracy is rarely interested in administration."

Still, the query once posed by Lord Bryce persists: "Why trust a nation of forty millions to deal with questions vital to national existence, and refuse to trust the inhabitants of departments and communes with the management of their own local affairs?" [1] And for decades French parliamentarians, administrators, writers, and reformers have discussed the problem, even though the people generally, caring more about being governed well than about governing themselves, take little interest in it. What changes, chiefly, are proposed?

CHANGES SUGGESTED:

1. CONSOLIDATION OF AREAS

First, there is the suggestion that the local-government map be overhauled and governmental efficiency increased by extensive consolidation of existing little units or areas. When studying English local government, we commented on the changed conditions arising nowadays from general use of motor cars, hard-surface highways, telephones, and other facilities annihilating the effects of distance, and observed that because of these and other developments there is a tendency toward the abandonment of older petty governmental areas in favor of larger ones. The parish, we saw, has ceased to have governmental importance, and the poor-law union has disappeared. Allusion was made also to the apparent doom of the township in many parts of the United States; and, in general, the impression was left that local-government consolidation is in both countries a task and problem of major proportions. The same situation exists in France. There one finds thousands of little rural communes which not only have no physical justification, but lack the tax resources requisite for maintaining the governmental machinery required of them and for supporting the services which people in this day and age demand. Why should not consolidations—which in point of fact have, in one way or another, reduced a total of 44,000 communes a century and a half ago to not much above 38,000 today—diminish the surviving number by half, or even more? Considerable savings could be effected and doubtless greater all-round efficiency attained. Why, indeed, should there also be as many as 90 departments? Like the counties in many of our American states, the French departments were laid out a long time ago with a view to making it possible for the inhabitants to travel to the seat of government and return to their homes in the course of a single day. Under modern conditions, however, both counties and departments might easily be two or three times as large, with substantial savings on buildings, salaries,

[1] *Modern Democracies*, I, 283.

electoral expenses, and other matters; and in France proposals have often been heard that the number of departments be cut to perhaps less than half of the present figure.[1]

As anyone who has followed the county-consolidation movement in the United States would, however, anticipate, suggestions for any comprehensive consolidation in France get no general support. Even the idea is by most people regarded as fantastic. Local pride stands squarely in the way; tradition and inertia furnish further obstacles; and if these were not enough, the vested interests of prefects, mayors, and other local officials, tied in closely with party politics, would make any general change almost impossible.[2] To be sure, the procedure by which a commune today can be (and in occasional instances is) combined with another one—or, for that matter, divided into two or more—is simpler than formerly; beginning in 1938, any change in communal boundaries can be made, without reference to Parliament, by administrative decree from Paris. A general reconstruction of the country's local-government map, whether by decree or by legislation, is, however, simply not in the cards. The most that can be hoped for is increased use of powers (rather recently conferred) under which two or more communes can pool and jointly support certain types of services—although, on the whole, experience with arrangements of this kind has not up to now been particularly gratifying.[3]

2. DECONCENTRATION AND DECENTRALIZATION

Then there are proposals for deconcentration and decentralization. To deconcentrate is to transfer discretionary powers from the Ministry of the Interior to the prefect—from the prefect, too, to the subprefect or other lesser agents of the national government functioning in the departments. To decentralize is to transfer powers outright from the central government to councils or other authorities belonging essentially to the local areas. Of deconcentration, there already has been a good deal; the decrees of 1926, for example, moved many powers outward along the lines that reach from Paris to the desks of the prefects. Decentralization, likewise, has been progressing; here again, the decrees of 1926 added a chapter. Anyone, however, who has read the foregoing description of

[1] See R. Le Conte's scheme for reducing the departments from 90 to 34, in *Rev du Droit Pub. et de la Sci. Polit.*, July–Sept., 1926, pp. 530–533. Several American states have provided procedures for voluntary county consolidation, although as yet few actual consolidations have taken place.

[2] One recalls that even in the case of the 107 *arrondissements* suppressed by the Poincaré administrative reforms of 1926, local and political pressure soon drove Parliament to reestablish most of them.

[3] W. R. Sharp, in W. Anderson (ed.), *Local Governments in Europe*, 176–177.

the administrative system as it still stands will be prepared to admit that long distances remain to be travelled before the French people locally can be said truly to govern themselves. Nor will one be surprised to learn that, notwithstanding the stout defense of present arrangements certain to be heard whenever the subject is broached, proposals for speeding up both deconcentration and decentralization—even to the extent of suppressing the prefect's office—receive a good deal of thoughtful attention, even in government circles at Paris.

3. REGIONALISM

The most ambitious proposal of all is that the country be reorganized, on historical and cultural lines, into a number of great self-governing divisions or "regions." This is no new idea. The philosopher Comte worked out a plan for 17 such regions in 1854, Le Play for 13 in 1864, and under the Third Republic a long line of politicians, geographers, and others have tried their hand at something of the kind, not to mention a score or more of ministerial and parliamentary proposals relating to the matter. As developed by some, the scheme would call for doing away with the departments altogether; by others, for retaining the departments (as now, or in smaller number) for certain administrative purposes, with the superimposition upon them of larger units to which most of the present work of local government —aside from that which in the nature of things must be left to the commune—should be transferred. In either case, the "region," with an elective council approximating a provincial parliament and a strong executive, probably also elected locally, would be endowed with far more autonomy than any French area of local government at present enjoys. For the purpose, some of the old provinces swept away in 1789-90, *e.g.*, Normandy, Brittany, Limousin, Poitou, Provence, and Languedoc, would probably be revived; at all events, effort would be made to lay out the new areas with regard for not only physical compactness but historical traditions and cultural unity such as the purely artificial departments have commonly lacked—and were intended to lack. Most plans propounded have contemplated some 20 or 25 regions, as compared with 33 recognized provincial areas in 1789.

Naturally, regionalist proposals differ widely, not only as to the number and nature of the regions to be established, but as to the amount and kinds of power to be bestowed on the regional governments; indeed, one reason why the movement makes no faster headway is the inability of its supporters to unite on a definite program. In general, plans that have emanated from, or engaged the attention

of, ministers and parliamentary committees have been of moderate scope; and some measure of the distance that the proposal still has to cover if it is ever to prevail is supplied by the fact that never to this day has any one of even these less drastic plans in which committees have interested themselves been debated in either the Chamber or the Senate.[1] Penetrating far beyond all other responsible proposals for local-government reform, regionalism inevitably stirs opposition on many grounds, *e.g.*, (1) that it would tend to revive the provincial, or sectional, spirit which in times past was a chief obstacle to national unity; (2) that it would start the country on the road to federalism; (3) that the local-government system as it stands is capable of being reformed to meet such popular demand as really exists without breaking up the jurisdictional areas to which the people have grown accustomed—arguments which, in part, are very similar to those employed in Great Britain against plans for devolution.[2] Admittedly, the regionalist concept has attractiveness. It has genuine vitality as well. To the present time, however, the very respectable amount of reconstruction of local government and administration that has taken place has been pursued on different lines, and so far as one can peer into the misty future, this will continue to be the case.[3]

[1] This is true even of a mild plan which the council of ministers endorsed in principle in 1925—a scheme under which, with the departments left as they were, 20 to 25 regions were to be superimposed upon them and equipped with a superior order of prefects and councils. As already indicated, most plans run aground when their sponsors begin trying to decide what powers and functions shall be devolved upon the regional authorities.

[2] See p. 268 above.

[3] The general subject of centralization and decentralization is dealt with in L. Duguit, *Law in the Modern State*, Chap. iv, W. R Sharp, *The French Civil Service*, Chap. ii, R. K. Gooch, *Regionalism in France* (New York, 1931), Chaps. ii–iii, P. Larogue, *La tutelle administrative* (Paris, 1933), and J. W. Garner, "Administrative Reform in France," *Amer. Polit. Sci. Rev*, Feb., 1919. The subject is considered in relation to regionalism in Gooch, *op. cit.* (the best work on the subject in English), C J. H. Hayes, *France: A Nation of Patriots*, Chap xi, R H. Soltau, "Regionalism and Administrative Decentralization in France," *Economica*, June, 1922, N. Carpenter, "The Nature and Origins of the French Regionalist Movement," *Pub. of Amer. Sociol. Soc.*, May, 1930; and C. Brun, *Le régionalisme* (Paris, 1911).

CHAPTER XXX

The Imperial Background

LESS than a decade ago, the government of Germany could have been discussed quite as appropriately as that of Great Britain or France under the caption adopted for Part I of this book, "Parliamentary Democracies." Defeated in arms and swept by revolution, the country had in 1918 seen its autocratic imperial and state governments topple to the ground, and, equipped with an imposing set of republican constitutions, had placed itself almost over night in the front rank of European democratic states. How the new order would have worked out under more favorable circumstances, we shall never know; a people as unschooled in the difficult art of self-government as were the Germans on the morrow of their emancipation from Hohenzollern autocracy could hardly have been expected not to make mistakes and suffer lapses. As it was, ten years of valiant effort by sturdy political elements that had created the new system failed to establish it sufficiently in the confidence and affection of the nation to enable it to withstand the assaults cumulatively made upon it. We can see now that under the shadow of the punitive Versailles treaty it really never had a chance. Rapidly disintegrating after 1929, the régime was dealt a staggering blow by the triumphs of Adolf Hitler and his National Socialists in 1932–33, and in the last-mentioned year it suffered the humiliation of being pushed roughly aside to make way for another of the blatant dictatorships in which post-war Europe increasingly abounds. Persons who had followed German affairs at close range, and who knew the depths of disillusionment and despair into which military defeat and economic disaster had plunged the bulk of the people, were to some extent prepared for the *débâcle*. The world in general, however—at least that part of it in which liberal principles were still cherished—was both startled and terrified. Friends of democracy realized that

AN ASTONISHING POLITICAL CYCLE

a cause already struggling against heavy odds had suffered yet another serious set-back; persons anxious above all for international peace trembled—as we now know they had ample reason to do—at the enhanced possibility of a new conflagration.

Thus it came about that Germany ceased to qualify as a "parliamentary democracy" and took her place once more among European countries having autocratic government. Autocracy of kings and emperors is, to be sure, almost a thing of the past. With only one or two exceptions, European autocrats of today do not wear crowns. But whether in Italy, Russia, Spain, Yugoslavia, Hungary, Greece, or Germany, such popular government as once existed is no more, and the dictatorships of *Duces* and *Führers* is in the saddle. How long this will remain true, in Germany as elsewhere, no man can say. Already, some of the dictatorships—notably that in Italy—have outlasted most people's expectation. On the other hand, all contain the seeds of their own destruction, and, notwithstanding that in countries like Italy and Germany a generation is growing up which has lost all contact with free political institutions, a few turns of the wheel, sufficiently cataclysmic (*e.g.*, Germany's new war), might bring outlawed democracy once more into force and favor.

THREE SUCCESSIVE GERMAN GOVERNMENTS TO BE STUDIED

Focusing our attention now upon Germany, and eschewing all attempts at prophecy, we may endeavor to see how and why the Hitlerian dictatorship arose, what it has meant for the country's political life, how government is organized and conducted under it, and what are the techniques and procedures by which it maintains itself. There is much to be said, however, before we can take up these matters intelligently. Prior to Hitler's "Third Reich" came the Weimar Republic, and prior to that, the old Empire, or "Second Reich." The former we must study, not only because the system of government prevailing under it merits attention for its own sake, but because its failures furnished the springboard from which the leap to dictatorship was taken. The Empire built up and ruled by the Hohenzollerns must also, in its turn, be brought into view, because it, after all, contributed heavily to the institutional equipment of the Republic, and even more to the spirit and methods of the régime more recently existing. First, then, the old Empire.

If you look at a map of the Europe of a century and a half ago, you will find throughout a vast central area stretching from France on the west to Poland and Hungary on the east, and from Denmark

on the north to the toe of the Italian boot on the south, a veritable jumble of splotches of color indicating kingdoms, principalities, electorates, duchies, margravates, bishoprics, and what not—the whole plastered over with one grand caption, "Holy Roman Empire," or simply "The Empire." Except for the names of rivers and towns, a few regional names such as Saxony, Bavaria, and Wurttemberg, you would hardly recognize anything suggestive of present-day Germany. You realize, however, that the Germany of von Hindenburg and Hitler must somehow have been built out of these bewilderingly interlaced political units; and although you may have thought of even this newer Germany, with its score of large and small *Lander,* as little better than a patchwork of political geography, you marvel that any substantial degree of unity whatsoever should have been achieved, considering the feudally pulverized areas out of which the Reich of our time had to be constructed.

POLITICAL GEOGRAPHY OF EIGHTEENTH-CENTURY GERMANY

Such integration as was implied in the term "Holy Roman Empire" was indeed illusory. There was, to be sure, an emperor, nominally chosen by a handful of lay and ecclesiastical magnates, though invariably an hereditary prince of the house of Habsburg. There was also a diet. But the former commanded only shadowy allegiance, and the latter had long since lost all genuine claim to power. At best a loose federation of sovereign principalities, the Empire was, in the witticism of Voltaire, neither holy nor Roman, nor yet in any proper sense an empire at all. So decrepit indeed was this once proud political creation—the "First Reich," according to current Nazi chronology—that a truly unified Germany could never have arisen from it; and in any case Napoleon erased it completely from the map in 1806. For the development of German union, one looks rather to a small, and in the beginning unpromising, principality in the north, the "mark," or electorate, of Brandenburg, whose rulers, belonging to the house of Hohenzollern, early in the seventeenth century extended their sway eastward over the duchy of Prussia and westward over that of Cleves, and, moving on to other triumphs, found themselves even by 1650 the sovereigns of a larger area than any other of German character except Austria. In 1701, the title of elector of Brandenburg was dropped and that of king of Prussia assumed; and in the long reign of Frederick the Great (1740–86)—termed by the jurist Bluntschli "the first and most distinguished representative of the modern idea of

THE SHADOWY HOLY ROMAN EMPIRE

THE RISE OF PRUSSIA

the state"—seizures from Austria and annexations in other directions brought the kingdom to a point where it was recognized as one of the principal European powers. Even so, the German portions of central Europe at the close of the eighteenth century were still cut into upwards of 1,800 independent political jurisdictions, ruled in most cases by absolute princes, great or small. Society was as yet feudal; half of the people were serfs.

NAPOLEON REORGANIZES GERMANY

As every student of history knows, Napoleon's armies swept victoriously across German territory and Napoleonic statecraft followed with revolutionizing transformations. Once Jena and Tilsit had brought central Europe to his feet, the conqueror not only did away with the shadowy Empire,[1] but blotted out most of the petty principalities, reduced Prussia to almost half of its previous area, and erected most of the surviving states into a far-flung Confederation of the Rhine, designed as a tributary and eastern bulwark of France. In this main objective, the plan miscarried, and when the tide of fortune turned, the Germans were found on the side against the Corsican. The consolidations, however, proved for the most part permanent, and the German-speaking world—especially Prussia—although plunged for a time into the depths of despair by the unexpected and humiliating subjugation, came off with a new consciousness of common interests, a reformed economic order, improved methods of administration, the beginnings of strong national armies, and a generally enhanced morale. Napoleon, remarks Professor Munro, was not least among the makers of modern Germany.[2]

THE GERMAN CONFEDERATION OF 1815

When readjusting the affairs of war-torn Europe, the Congress of Vienna restored to Prussia, as one of the victors at Waterloo, some of the territory that she had lost, and then organized the now emerging Germany into a confederation of 38 (after 1817, 39) states, under the perpetual presidency of Austria. The union was hardly more substantial than that under the old Empire. For, although there was a diet, consisting of representatives appointed by the princes, and charged with responsibility for protecting the country against external aggression and internal disorder, the body had no power to levy taxes or to assert other au-

[1] In anticipation of the probable extinction of the dignity of emperor of the Holy Roman Empire, the Emperor Francis II, in 1804, assumed the title of emperor of Austria, under the name of Francis I. The new title endured until the break-up of the Dual Monarchy at the close of the World War.

[2] *The Governments of Europe* (rev. ed.), 590. H A L Fisher, *Studies in Napoleonic Statesmanship; Germany* (Oxford, 1903), is an informing treatise.

thority over the people directly, and furthermore could arrive at decisions on important matters only by unanimous vote, which could rarely be secured. A *Zollverein*, or customs union, gradually built up under Prussian leadership in succeeding decades, imparted a degree of economic solidarity to the structure. But of political unity, there was little. Two mutually jealous states stood out head and shoulders above the rest, *i.e.*, Austria and Prussia, and around them the lesser ones ranged themselves in two similarly jealous and suspicious camps. When Austria and Prussia could agree, things could usually be done. When, as commonly happened, they took opposite sides of a question, deadlock paralyzed action.

THE MID-CENTURY LIBERAL MOVEMENT

The struggle with Napoleon brought Germany, however, a good deal more than merely a clumsy new political structure. A sense of nationality was awakened, and with it a desire for less autocratic government. For three decades thereafter, people of liberal inclination waged, against great odds, a stubborn campaign for a new national state, parliamentary institutions, and guarantees of personal freedom. During the whole of this period, however, the malign influence of the reactionary Austrian minister, Prince Metternich, rested like a blanket upon all central Europe, and until near the middle of the century little chance for liberalization appeared. To be sure, beginning in 1816, written constitutions, as ordained by the Congress of Vienna, were promulgated in most of the states. In no instance, however, was a popular form of government provided for, and in the two most important states, Austria and Prussia, reactionary princes contrived to avoid taking any step of the kind at all.

THE FAILURE OF 1848

Matters were brought to a crisis by the revolution of 1848 in France. All over Germany sympathetic revolt broke out; no one had realized how much latent strength the reform movement had gathered. Prince after prince, panic-stricken, offered concessions, and if only the reform forces had been united upon a program and ready to strike while the iron was hot, a liberal German Empire might then and there have become a reality. This, in turn, might have meant a very different future for the German people and for the world. Some of the liberals, however, envisaged only a constitutional monarchy; others were wedded to the idea of a republic. Some did not look beyond a moderately strengthened federation; others were prepared to be satisfied with nothing less than a unitary government like that of France or England. The upshot was that when, in May,

1848, a National German Parliament, elected by manhood suffrage, convened at Frankfort-on-the-Main to consider the broad subject of political reform, the opportunity to replace the discredited Confederation with a united, liberally governed Germany was lost. While visionary and dogmatic delegates harangued their colleagues through long months in wearisome attempts to convince them that this clause or that should go into the proposed new constitution, the revolution spent its force and the princes plucked up courage to offer effective resistance. A really excellent frame of government, providing for a federally organized constitutional empire, with a parliament of two houses, manhood suffrage, and a responsible ministry, was indeed agreed upon in 1849.[1] But when the imperial crown was offered to the Prussian sovereign, he waved it aside contemptuously; the government of neither Prussia nor Austria, nor in fact of any other of the larger states, endorsed the plan; and the entire effort collapsed. Never again until 1918 did liberalism have so good a chance to set Germany on the high road toward free and enlightened government.

THE RESORT TO "BLOOD AND IRON"

Germany was destined to become a constitutional empire, but not through the efforts of professors, students, poets, and philosophers, and not on the lines that such idealists would have projected. Long after the exciting days of 1848, Bismarck wrote in his *Reflections and Reminiscences* that not even when the turmoil was greatest did he consider the situation "unfavorable," since the real "barometer" was not "the noise of parliaments great and small" but "the attitude of the troops." It was unfortunately through the use of these troops —by "blood and iron"—that the Germany of more recent generations was created. Becoming prime minister of Prussia in 1862, Bismarck guided the political destinies of the German people for a full generation. Prussia had indeed acquired a written constitution in 1850—the only tangible result of the 1848 revolutions east of the Rhine. But a refractory parliament was not allowed to stand in the way of Bismarck's plans. Assuring the chambers that German unity was not to be attained "by speeches and resolutions of majorities," the doughty minister induced the king to order a dissolution and for four years taxed and borrowed money independently, building up an army suitable for his purpose. Already plotting a forcible ejection of the polyglot Austria from the Confederation as a step

[1] Text (arranged in 197 neatly phrased paragraphs) in F. Marschall von Bieberstein, *Verfassungsrechtliche Reichsgesetze und wichtige Verordnungen* (Mannheim, 1929), 85–118. For an excellent account, see J. A. Hawgood, *Modern Constitutions Since 1787* (New York, 1939), Chap. xvi.

toward converting the feeble structure into a consolidated German state, he cynically dragged his intended victim, in 1864, into a war with Denmark, and then, when all was ready, in 1866 announced a plan for reorganization which the Habsburg monarchy could be depended upon to reject—going on, as soon as the inevitable refusal was received, to declare the Confederation dissolved and hurl the Prussian army against the unprepared rival.

SUBSTANTIAL UNIFICATION ACHIEVED

A short war ended in Austria's complete defeat; and thereupon Prussia not only absorbed into her own territory a number of lesser states which had shared in her triumph, but engineered the formation of a new German union, a "North German Confederation" (1867), consisting of all of the surviving states—22 in number—north of the Main River.[1] For the time being, the southern states of Bavaria, Baden, Württemberg, and Hesse-Darmstadt were left to their own devices. But the constitution of the new Confederation left a door open for them, and the Franco-Prussian war of 1870, in which they unanimously cast in their fortunes with Prussia, furnished opportunity for a series of hard-won treaties bringing all four into the union, notwithstanding their strong particularist traditions, and clearing the way for the next great step in Bismarck's program. On January 18, 1871, in the famous Hall of Mirrors in the palace of Louis XIV at Versailles, William I of Prussia, president of the North German Confederation, was proclaimed *Deutscher Kaiser*, "German Emperor." By its reminder of days when it meant theoretically more but practically less than now, the title, said Bismarck, would "constitute an element making for unity and concentration."[2]

A POLITICAL SYSTEM THAT DID NOT ENDURE

The Empire so proudly announced to the world while German cannon were still pounding the fast-weakening city of Paris is now a thing of the past. To be sure, for 40 years the new Germany advanced by leaps and bounds along lines that Bismarck laid out for it; until William II chose to "drop the pilot" in 1890, the Iron Chancellor was himself the steersman of its course. Eventually, however, militarism led to war; war brought defeat; defeat

[1] There came a day when Austria's adhesion to Germany was earnestly desired; and, notwithstanding the prohibition laid down in the Versailles treaty, Hitler brought it about in the spring of 1938. The Austria of 1938, however, was a very different affair from that of 1866. See p 640, note 2, below.

[2] The founding of the Empire is described briefly in E. Howard, *The German Empire* (New York, 1906), Chap. i, and E. Henderson, *Short History of Germany* (new ed., New York, 1916), Chaps viii–x, more fully in M Smith, *Bismarck and German Unity* (New York, 1910), and J. W. Headlam, *Bismarck and the Foundation of the German Empire* (New York, 1899).

opened the flood-gates of revolution; and in 1918–19, a chastened people, reduced in territory and hedged about with restraints imposed by triumphant allies, faced the task of regaining national prosperity and strength with the aid of a reconstructed political system unlike in most of its larger features any that either Germany or the rest of the world had ever known. Succeeding only indifferently, they in 1933 embarked upon still another political adventure, repudiating, under Hitlerian dictatorship, their hard-won democracy and embracing government of a more uncompromisingly authoritarian character than had at any time prevailed in the Fatherland under an enthroned monarch. As already observed, the German government with which we are to deal in succeeding chapters is, therefore, not that of the vanished Empire, but that of the storm-tossed Republic of 1918–33, as remodelled and turned to their purposes by the architects of the Third Reich.

What, however, were the salient features of the political system while the Empire yet stood?

THE EMPIRE AND ITS CONSTITUTION

To begin with, the Empire was only an enlarged edition of the North German Confederation. Its constitution was the document prepared by Bismarck for the Confederation (in a single afternoon, we are told), with only such slight changes as were entailed by the adhesion of the southern states and the introduction of the title of emperor.[1] The king of Prussia became emperor instead of president, and a popularly elected Bundestag was renamed "Reichstag," with representatives admitted from the new states. Otherwise, practically everything remained the same. The red-letter date in the building of the Empire was not 1871, but 1867.

The imperial constitution was a deftly framed instrument—concise, clear, and practical. It contained no bill of rights, nor much of anything else bordering on the theoretical.[2] It provided for the principal organs of government—emperor, chancellor, Bundesrat, Reichstag. It defined, in much detail, the relations of the states with the Empire, and was especially full on subjects like tariffs, railways, posts and telegraphs, navigation, finance, and the army—matters over which, as Bismarck well understood, it would be necessary for the imperial authorities to have supreme control if

[1] The text will be found in F. Marschall von Bieberstein, *op. cit.*, 119–147, and in English translation in W. F. Dodd, *Modern Constitutions*, I, 325–351, and many other places.

[2] There were bills of rights in some of the state constitutions, including the Prussian, but with little or no provision for making them effective.

Germany were to attain her coveted place among the nations. A mode of amendment was provided also, at once easy and difficult: any amendment might be adopted by vote of the Bundesrat and Reichstag, like an ordinary law, except that if as many as 14 votes were cast in the negative in the Bundesrat, a proposal was to be regarded as lost. The catch lay in the fact that the kingdom of Prussia, with 17 votes of her own in that body, was able to defeat any amendment single-handedly, while no other state had enough votes to do so. Americans sometimes complain because one more than a quarter of our 48 states, *i.e.*, 13, can, if they choose, defeat an amendment to our national constitution. In the German Empire, it was possible for one state alone to wield similarly obstructive power—provided, of course, that state was Prussia. Down to 1914, a total of 11 constitutional amendments won acceptance, but none that involved any significant change in the country's government.

A FEDERAL SYSTEM

The juristic nature of the Empire is a rather abstruse matter, on which not all Germans are agreed. There can be no doubt, however, that a loose confederation of sovereign principalities had been converted into a much stronger type of state with a federal system of government. Wherever sovereignty was to be found, it certainly was no longer in Prussia, Bavaria, and the other areas as individual political entities.[1] Powers of government were deftly divided between the states and a new super-entity, the Empire. It is because of this division that the system was federal—not for the reason merely that there was a division (for everywhere, even in England and France, powers are divided between national and subordinate governments), but because in Germany, as in Switzerland and the United States, the division was ordained in the fundamental law, and, as a matter of law, could be altered only by constitutional amendment. The general principle on which powers were divided was the same as in the two countries last mentioned; that is to say, the powers of the national government were enumerated and delegated, while those of the states were unenumerated and residual. As in our own country, certain powers were given exclusively to the national government, *e.g.*, control over national citizenship,[2] the navy, regulation

[1] This has been disputed by some able south German constitutional lawyers, *e g*, Max Seydel, but is upheld by majority opinion. The best view seems to be that sovereignty resided, not in the individual states, nor in the Empire as such, and certainly not in the "people," but rather in the "totality of the states" as represented in the Bundesrat (Bismarck's phrase for it was *Gesammtheit der verbundeten Regierungen*) See F K. Kruger, *Government and Politics of Germany* (Yonkers, 1915). Chap iv

[2] See p 647, note 1, below.

of the merchant marine, tariff legislation, posts and telegraphs, weights and measures, patents, and coinage. Other powers were vested solely in the states, *e.g.*, determination of their own forms of government, laws of succession, relations of church and state, public instruction, highways, and police. Still others were curiously divided between Empire and states.

As time passed, the Empire tended to draw to itself an ever-increasing measure of authority, partly by constitutional amendment, but far more largely by usage and statute. The same centralizing tendency has been witnessed in the United States; but whereas encroachment on state powers has here been held somewhat in check by judicial review, in the German Empire there was no restriction of that nature.[1] Again and again, protest was heard (especially from Bavaria and other southern states) against the growing consolidation—some called it "Prussianization"—of the Empire. But the tendency was still strikingly in evidence in 1914.

SOME PECULIAR FEATURES

As a federal structure, imperial Germany presented a number of unusual aspects. In the first place, it was, in ex-President Lowell's oft-quoted characterization, a compact between "a lion, a half-dozen foxes, and a score of mice." The lion was of course Prussia, greater both in area and in population than all of the remaining 24 states combined. The tiniest of the "mice" was the free city of Bremen, with an area of only 99 square miles, although Schaumburg-Lippe was smallest in terms of population. The American states differ widely in extent and number of inhabitants; but not even the largest or most populous among them towers over the rest in a fashion approaching that of Prussia in the German union, either before 1919 or later. Such inequality must inevitably have given some states greater political weight than others. But this result was aggravated under the Empire by constitutional provisions deliberately introducing legal, in addition to physical, disparity. In the United States, all states are legally equal; whatever rights and powers are possessed by one are possessed by all. Not so in imperial Germany. When consenting to cast in their lot with the other 22 states in 1871, Bavaria and Wurttemberg reserved the right to administer independently the postal and telegraph services within their borders; Bavaria, Wurttemberg, and Baden, exclusive right to tax beers and brandies manufactured by their people; and Bavaria, the right to administer her own railways.

[1] State laws could be invalidated if in conflict with imperial laws, but the latter, if properly enacted and promulgated, could not be questioned See p. 645 below

Still more significant were the special prerogatives of Prussia. Her king was *ex officio* emperor; she alone had votes enough in the Bundesrat to defeat constitutional amendments independently; all committee chairmanships in that body except one were hers. Moreover, to these constitutional advantages were added others arising from her superior population, *e.g.*, a majority of seats in the Reichstag; still others fixed by usage, *e.g.*, the almost invariable appointment of her prime minister as imperial chancellor; and yet others flowing from interstate treaties, notably those by which she acquired exclusive right to recruit, drill, and administer the armed forces of all of the states except Bavaria, Wurttemberg, and Saxony. Prussia had created the Empire, and with the aid of carefully devised constitutional provisions and interstate compacts, her natural preeminence in the union enabled her to run it, with only a certain amount of grudging deference to the wishes of her associates.

One other interesting feature requires mention. Although in our own country increasing use is made of state officials and agencies in administering national functions,[1] our policy has commonly been to provide national machinery to the full extent required for executing national laws. This, however, has not been the traditional German plan. Under the Empire—and the same was true in lesser degree under the Republic down to the time when, in 1933, the states were all but wiped out by Nazi decrees—the national government looked for the administration of most of its laws, not to officials appointed and paid from Berlin, but to the functionaries of the various states. Exception was made in the case of the foreign service, the navy, and the post office; and military administration was centralized, albeit in Prussian rather than imperial hands. But otherwise the states were relied upon, subject to only a certain amount of inspecting and directing power in the imperial authorities. So far as machinery went, the imperial government, lacking not only a nation-wide judicial establishment, but also most of the usual administrative equipment, was but part of a government, quite incapable of carrying on the affairs of the nation except as the states collaborated in the task.[2]

[1] Notably in connection with the National Guard and with various forms of federal aid as developed both before and under the "New Deal" See A. N. Holcombe, "The States as Agents of the Nation," *Southwestern Polit. Sci. Quar.*, Mar., 1921; W. B Graves, "The Future of the American States," *Amer. Polit Sci Rev.*, Feb., 1936.

[2] The constitutional and juridical nature of the Empire is dealt with in B E. Howard, *The German Empire*, Chap. ii, and F. Kruger, *Government and Politics of Germany*, Chap. iv.

THE IMPERIAL GOVERNMENT:

1. THE EMPEROR

The most conspicuous figure in the government of pre-war Germany was the emperor. The post which this now vanished dignitary filled was, however, unique in the extreme, and few people except Germans ever really understood it. To all intents and purposes, it was merely a continuation of the *praesidium*, or presidency, which the constitution of the North German Confederation vested in the king of Prussia. As revised in 1871, the constitution prescribed that the incumbent should thenceforth bear the title of *Deutscher Kaiser* (German emperor). It, however, conferred few additional prerogatives; and from first to last the emperor, although ranking among the world's leading monarchs, had, *as such*, an amazingly small amount of power. As emperor, he had no throne and no salary. He was not even "emperor of Germany"—that would have implied sovereignty equally from frontier to frontier—but only "German emperor." He was, however, king of Prussia—territorial sovereign of by far the largest of the states, and in that broad domain he was limited but slightly by constitutional forms; and this is what chiefly gave him power and importance. Some functions, to be sure, accrued to him as emperor. In this capacity, and not as Prussian king, he convoked, opened, and adjourned the Bundesrat and Reichstag, promulgated imperial laws, appointed the chancellor and other high administrative officials, exercised supreme command of the navy and, in time of war, of the army as well, and wielded considerable, although not independent, control over the conduct of foreign relations. Needless to say, these functions—especially the last two—carried with them a good deal of power. Even they drew importance, however, chiefly from being exercised by the mightiest of the territorial princes; and in practice it was never possible to say precisely where authority as emperor began and that as king left off. What William II could not do as Kaiser, he commonly could contrive to do as autocratic head of the most powerful state of the union.

2. CHANCELLOR AND MINISTERS

Equally unusual were the arrangements for imperial administration—in the lower levels, because of the large use made of the state functionaries, as explained above; in the upper ones, because of the insertion between the emperor as titular head and the ministers as heads of departments of a most extraordinary official in the person of the chancellor. When drawing up the constitution of 1867, Bismarck provided for himself a unique place as adviser to the emperor. Ministers—more properly "state secretaries"—there were

to be, but merely subordinates to the chancellor, selected and controlled by him, and functioning only as glorified chief clerks in charge of the routine work of the several departments. Any responsibility that they bore was solely to the chancellor, just as the responsibility which the revised constitution of 1871 imposed upon that official was (in practice at least) to the emperor alone. Throughout its history, the Empire had no cabinet at all—unless, as one writer puts it, the chancellor be thought of as a sort of one-man cabinet; and of course there was nothing approaching cabinet, or parliamentary, government in the English or French meaning of the term. Appointed by the emperor, and commonly holding simultaneously the post of premier of Prussia, the chancellor was at the same time presiding officer and official spokesman of the highly powerful Bundesrat and head of the imperial administration. He it was who carried all important legislative proposals, after adoption by the Bundesrat, to the Reichstag for its approval. He it was who guided and controlled the ministers, whose departments were in truth merely bureaus of the historic *Reichskanzleramt*, or imperial chancery.

3. THE BUNDESRAT

Viewed from a distance, the German Empire seemed to have a bicameral parliament, with the Reichstag as a lower and the Bundesrat as an upper chamber. Examined more closely, the situation took on a different aspect. The Reichstag was a true parliamentary body. But the Bundesrat was of such exceptional nature, and held so exalted a position, that one would be misguided entirely to think of it as merely a branch of a legislature. More truly than the emperor or chancellor or any other organ, it was the pivot on which the entire imperial system turned. To begin with, the Bundesrat represented, not people, but states, or more properly the governments of states. To each state, or government, the imperial constitution allotted a definite quota of votes—not on the principle of equality as in the Senate of the United States, nor yet in exact proportion to population, but nevertheless with some regard for the states' relative size and importance. Prussia led the list with 17 votes; Bavaria followed with six; and 17 of the lesser states had only one apiece—the total being 58 until 1911, when three were bestowed on the *Reichsland* of Alsace-Lorraine, bringing the figure to 61. These votes were under full control of the respective state governments, and were cast (1) in indivisible blocks by deputations of state officials (as large as the state cared to send, up to the number of votes possessed), dispatched to Berlin in a quasi-diplomatic capacity, and (2) in strict accordance

with instructions given from the various state capitals. The Bundesrat was not, therefore, an ordinary deliberative assembly in which the members, acting as individuals, introduced proposals, debated them, and reached decisions. Most business came to it from outside —from the emperor through the chancellor, and from state governments—and on most matters, the members, if not already instructed, were required to turn to the home authorities to ascertain the course that they should take. Even so, the Bundesrat was a hard-working body, in session, behind closed doors, practically all of the time. The chancellor, or a substitute designated by him, presided; 12 committees functioned in such fields as foreign relations, finance, and military affairs; and not only did the body prepare and first adopt all legislation (including the budget) later sent to the Reichstag for endorsement, but it issued administrative ordinances necessary for the enforcement of imperial laws, took steps to secure the execution of law in troublesome cases, shared the powers of appointment, treaty-making, and declaring war, audited accounts, and served both as a supreme administrative court and as a court of last resort in disputes between the states or between the imperial government and a state.

4. THE REICHSTAG

The Bundesrat represented the federal principle, but the Reichstag was broadly national. Its 397 members were chosen simultaneously from single-member districts for a term of five years (barring dissolution), not by indirect and oral election under an undemocratic class system, as in the case of members of the Prussian House of Representatives,[1] but directly, by secret ballot, with no plural voting, and by an electorate consisting of all duly registered male citizens 25 years of age or over. The conduct of elections left little to be desired, and majority election was assured by a plan of second balloting under which, in the many "circles," or districts, in which, on account of the multiplicity of parties, no candidate received a majority at the first balloting, the voters were recalled to the polls a fortnight later to make their choice between the two who stood highest. The only distinctly unsatisfactory aspect of the electoral system was the extreme inequality of the electoral districts, arising from the fact that, notwithstanding

[1] The Prussian three-class system was conceded by Bismarck to be the worst "ever created." Representatives were chosen in the various electoral "circles," or districts, not by the people directly, but by electoral colleges, and in selecting the members of these colleges the few persons who paid the third of direct taxes contributed by the heaviest payers had equal power with the larger number paying the next third, and with the still larger quota of small payers contributing the final third

vast changes in the distribution of population, no reapportionment of seats whatsoever took place after 1871. The constitution was silent on the subject, and the parties (chiefly Conservative and Centrist) that dominated the rural sections had no mind to see the fast-growing urban and industrial populations endowed with increased electoral power and the strength of the Social Democrats in the chamber (mounting steadily in spite of the handicap imposed) proportionally increased.[1]

The Reichstag elected its own officers, made its own rules, created committees, sat usually with open doors, and in general conducted itself like a true deliberative assembly. Observers rarely failed to note, however, the usually scant attendance of members and the general listlessness of proceedings. Nor were the reasons difficult to discover. In part, they lay in the relative newness of the Reichstag as an organ of legislation and the inexperience of the German people with democratic institutions. But more largely they flowed from the fact that the constitutional order under which the Reichstag functioned gave no opportunity for the chamber to achieve a rôle of more than secondary importance. As indicated above, legislative proposals were considered first in the Bundesrat, and only after being approved there were sent to the Reichstag. The chancellor and other members of the superior body participated freely in Reichstag proceedings, in behalf of the measures in which they were interested. The government refused to recognize any power in the Reichstag to reduce appropriations for existing establishments and services. No responsibility to the Reichstag was admitted by the chancellor or any other imperial authority, and interpellations, although indulged in, were pointless because nobody ever resigned on account of an unfavorable vote. A troublesome Reichstag could always be dissolved, and, contrary to the situation in France, the provision for dissolutions was no dead letter. In a word, as the imperial government was actually operated, the Reichstag was a sort of fifth wheel to the wagon—a necessary concession to public sentiment and to world opinion, and on occasion useful, but never a force to be compared to the French Chamber or the British House of Commons. A mere "megaphone for political ambitions and complaints," [2] with a voice that usually did not carry far, it was regarded with no very

[1] Shortly before the World War, districts in agricultural East Prussia averaged 121,000 voters, in Berlin, 345,000

[2] H. Kraus, *The Crisis of German Democracy* (Princeton, 1932), 19. Other terms freely applied to the Reichstag by German critics were "debating society" and "hall of echoes."

great respect, even by the rank and file of the citizenry which it represented.[1]

[1] The governmental system of the Empire is dealt with at greater length in H. Finer, *Theory and Practice of Modern Government*, I. Chap. ix., *passim;* A. L. Lowell, *Governments and Parties of Continental Europe*, I, Chap. v, and II, Chap. vii, and especially F. Krüger, *Government and Politics of the German Empire*, Chaps. v–xvi, and E. Howard, *The German Empire*, Chaps. i–v, vii, ix. On the highly undemocratic government of the dominant state, Prussia, see F. A. Ogg, *The Governments of Europe* [1920 ed.], Chap. xxxvi, and A. L. Lowell, *op. cit.*, I, Chap. vi.

CHAPTER XXXI

From Empire to Republic

PLENTY of Germans a generation ago were prepared to maintain that their country's political arrangements—notwithstanding the absence of popular control (oftener, perhaps, *because* of that feature)—left little to be desired. Many, on the other hand, were of a different opinion; and attitudes on the subject were reflected significantly in the principles and programs of the various political parties. Of such parties, there were many—some, to be sure, only insignificant "splinter parties," or other lesser groups, but at least five possessing claim to major rank.

POLITICAL PARTIES AND REFORM PROGRAMS BEFORE THE WORLD WAR:

1. CONSERVATIVES

To begin with the most reactionary, the Conservatives found their leadership mainly among the great landholders of eastern Prussia, their voters among the agricultural wage-earners and public servants; and, being interested chiefly in maintaining the disproportionate political power which the imperial-Prussian set-up, combined with antiquated electoral systems, gave them, they were prepared to resist every suggestion for constitutional or electoral change. Next to them stood a party,

2. CENTRISTS

the Center, which, being founded and developed essentially as a Roman Catholic party, contained both aristocratic and popular elements, and was naturally strongest in the Catholic sections of the country, especially Bavaria, Silesia, and the Prussian Rhine provinces. Vigorously hostile toward socialism, the party nevertheless was cautiously liberal; indeed, it deliberately leaned as far as it dared in a liberal direction—in the matter, for example, of social insurance—with a view to attracting working-people who otherwise might go socialist. It had, however, no program of constitutional reform, and was often found acting with the Conservatives in a so-called "Blue-Black *bloc*." Next stood

3. NATIONAL LIBERALS

the National Liberals, the party preëminently of the industrial leaders and managers, with a large middle-class following, particularly in the cities, where, of course, the middle class was principally to be found. Here we first encounter desire for political change—an extensive

of political reform, even though economic changes fell far short of their ultimate objectives.[1]

WAR-TIME DEMAND FOR POLITICAL REFORM (1914–18)

When the World War came on in 1914, discussion of constitutional matters largely ceased. With few exceptions, even the Social Democrats gave the government their support, voting for whatever appropriations and powers it demanded. As the contest progressed, however, without prospect of early or perhaps favorable termination, criticism revived. In 1916, Chancellor von Bethmann-Hollweg found it expedient to promise electoral reform in Prussia, although to be delayed until after the war. In 1917, growing war weariness, aggravated by effects of the entrance of the United States and of revolution in Russia, not only led the Center party to join the forces of reform, but influenced the Reichstag to set up a special committee on the subject and forced a series of changes of chancellors in a vain effort to stem the tide. In the same year, the radical wing of the Social Democratic party seceded, forming a new party, known as the Independent Socialists, which from the first was openly hostile to the government. By 1918, the nation's morale was running low. Strikes and other revolutionary manifestations were occurring on all sides; hope of a smashing victory in arms before America could raise, train, and transport any large number of troops was fading; the government's hollow promises and shifty evasions on the subject of constitutional reform were costing it the confidence and support of increasing numbers of people. After the last great drives on the Western front failed to attain their objectives, the situation grew critical. Desperate efforts of the imperial authorities to hold things together did not prevent conviction from spreading among the armed forces and through the country that the war was lost, in September, the high command bluntly told the government that the army and navy could no longer be counted on, and that no course was open except to seek an armistice.

FAILURE OF ELEVENTH-HOUR CONCESSIONS

Then was enacted a chapter strikingly reminiscent of that recorded in France some fifty years earlier when the Second Empire was faced with ruin—except that in the present instance the eleventh-hour reforms designed to bolster up a tottering régime were decided upon and decreed in the brief space of six weeks instead of as many years. On September 30, the emperor proclaimed

[1] The parties of the imperial period are described more fully in F. Kruger, *op. cit.*, Chap. xvii.

radical agitators, had done their work. Disaffection was rife in both the army and the navy; workers in munition plants and factories, railwaymen, and even agricultural workers, were ready for revolt. Striving manfully to hold things together, Prince Maximilian planned a national assembly to frame a new constitution, and also talked hopefully of a final desperate rising of the nation in case the Allies' terms proved insupportable. But events moved too swiftly. On November 4–5, a long-brewing naval mutiny broke out at Kiel; three days later, Bavaria was swept by revolution and a republic proclaimed; two days more, and most of the important cities of the west and center, including Berlin itself, succumbed. On all sides, workers' and soldiers' councils, on the model of the Russian soviets, sprang into being, pushing the constitutional authorities aside and seizing provisional control of affairs. For days, the distracted chancellor, confronted with complete collapse of both the imperial and Prussian governments, tried by every conceivable argument to induce the emperor to abdicate. Only when finally convinced by his generals that he could no longer count upon the army did the humbled Hohenzollern give a qualified consent and allow himself to be hustled across the frontier into Holland, not until November 28 did he sign a formal act of abdication. But meanwhile, on November 9, the plan of abdication was announced as being to all intents and purposes effective, and with it a renunciation of the succession by the crown prince, and of the chancellorship, too, by the last surviving official spokesman of the old *régime*, "Prince Max." [1]

THE SOCIAL DEMOCRATS AT THE HELM

Recognizing that the Social Democrats, who had borne no responsibility for the old régime, were the logical people to take the helm, the retiring chancellor handed over *de facto* authority to their principal leader, a former saddle-maker of Heidelberg, Friedrich Ebert, who by a sort of legal fiction now became both chancellor and regent For a regency, however, there proved no need; the psychology of the situation had come to be such that only a republic was feasible; [2] and the chancellorship, as such, was regarded by Ebert himself as having evaporated in his hands within a few hours. Associating with himself two other Majority Socialist leaders and three prominent Independent Socialists, Ebert forthwith brought into being a provisional government of "peoples' commissars" which, on the evening of this

[1] All of the old state governments collapsed at about the same time Princes renounced their thrones, and republican governments under provisional councils were set up

[2] A republic, indeed, had been proclaimed from the steps of the Reichstag building on November 9.

same red-letter day, November 9, issued a rallying proclamation as follows: "Comrades: This day has completed the freeing of the people. The emperor has abdicated, his eldest son has renounced the throne. The Social Democratic party has taken over the government, and has offered entry into the government to the Independent Social Democratic party on the basis of complete equality. The new government will arrange for an election of a constituent national assembly, in which all citizens of either sex who are over 20 years of age will take part with absolutely equal rights. After that, it will resign its power into the hands of the new representatives of the people." [1] After clamoring vainly for a generation for some substantial share in the control of public policy, Germany's Social Democrats suddenly found themselves in possession of all the power there was—involuntary custodians of a storm-tossed nation's destiny. A revolution they must carry through, not so much because they desired to do so as because they knew that unless they proclaimed it as an accomplished fact, control would speedily pass out of their hands into those of the extremists on their left.[2]

THE WAY OPEN FOR A NEW POLITICAL ORDER

The old régime was palpably a thing of the past. Monarchy was gone—for the time being, at all events—in nation and in states. A Bundesrat, with newly commissioned members representing the republics, lingered as an administrative agency, but was not the Bundesrat of yore; besides, it soon disappeared. The president of the Reichstag tried twice to call the members of that body together, but succeeded only in provoking a decree of dissolution

[1] "The German Revolution," *Internat. Conciliation*, No 137, p 543 (Apr., 1919).

[2] Reform movements during the war, and the revolution that followed, are treated more fully in M W. Graham, *New Governments of Central Europe* (New York, 1924), Chaps. I, III, J Mattern, *Principles of the Constitutional Jurisprudence of the German National Republic* (Baltimore, 1928), 65–96, R. H Lutz, *The German Revolution, 1918–1919* (Stanford Univ., 1922), E Bevan, *German Social Democracy During the War* (New York, 1919), and H. G. Daniels, *The Rise of the German Republic* (London, 1927) German accounts available in English include H Strobel (Independent Socialist), *The German Revolution and After*, trans by J. H Stenning (London, 1923), H Delbruck, *Government and the Will of the People*, trans. by R S MacElwell (New York, 1923); and A Rosenberg, *The Birth of the German Republic*, trans by I. F. D. Morrow and L M. Sieveking (London, 1936). E. Bernstein, *Die deutsche Revolution* (Berlin, 1921), I, is an excellent account of events from early November, 1918, to the election of the Weimar Assembly, by an active Socialist participant Other first-hand accounts are P Scheidemann, *The Making of New Germany*, trans by J. E Mitchell, 2 vols (New York, 1929), and Prince Maximilian of Baden, *Memoirs*, trans by W M. Calder and C W. H. Sutton, 2 vols (New York, 1928). The principal collection of documents is R. H Lutz, *The Fall of the German Empire*, 2 vols (Stanford Univ., 1932).

Imperial and state constitutions became dead letters; nowhere was there authority except in revolutionary hands. In a situation such as this, what next? No man could foresee, and for months the world waited anxiously. Indeed, developments during the past eight or ten years have been such that the world is *still* waiting to see what the *ultimate* outcome will be. At the end of 1918, the only possible clues were those to be gleaned from scrutinizing the political forces then struggling for mastery.

POSSIBILITIES OF THE SITUATION.

Four main possibilities disclosed themselves. The first was a monarchist reaction. The circumstances under which the Hohenzollerns had fallen made it altogether unlikely that that particular dynasty would ever come back. Some other princely house might, however, win acceptance—most probably the rather popular Wittelsbach family previously ruling in Bavaria. After all, the German people as a whole had unquestionably been monarchist at heart, even the Social Democrats had never put a republican plank in their otherwise strongly liberal political platform. Furthermore, not only was the once powerful Conservative party (hastily rechristened the German National People's party) still undisguisedly in favor of continuing monarchy, but there were plenty of unconverted monarchists in the ranks of at least two other major parties, the Center and the National Liberal, now also bearing the new names of Christian People's and People's party, respectively. Continued internal disorder, coupled with the country's need for a strong executive in the face of a hostile world, undoubtedly might produce a swing back to monarchy, in both nation and states; in which event, the degree to which the hastily devised reforms of 1918 would survive would be problematical.

1. A MONARCHIST REACTION

2. A NEW RÉGIME ON MAJORITY SOCIALIST LINES

A second possibility was that a new régime would be organized under the leadership and control principally of the Majority Socialists. This would mean perpetuation of the new-born republic, adoption of a liberal constitution, establishment of broad political democracy, and at least some steps toward eventual socialization of the instrumentalities of production and distribution. It would not, however, mean much of what we today should regard as downright radicalism. In opposing the old order, the Social Democrats had been forced into a position which, by contrast, appeared extreme. Those of them now numbered with the Majority, however, had not wanted revolution, and had tried to avert it.

Having been put in power by it, they were bent upon keeping it within bounds.

3. IMMEDIATE ECONOMIC REVOLUTION AS FAVORED BY INDEPENDENT SOCIALISTS

A third course to which the situation might lead would be one marked out by the Independent Socialists. It would be frankly revolutionary. Although seeming at times to lean strongly to communism, the Independents were not, as a party, favorable to anything like a dictatorship of the proletariat. Nevertheless, they had little patience with the moderate ideas and cautious strategy of the Majority element, and were above all out of sympathy with the idea of putting political reorganization first and letting socialization come afterwards. They would postpone such tasks as adopting a new constitution, and proceed at once with economic and social reconstruction.

4. A SPARTACIST TRIUMPH

A final possibility was that the most radical element of all, the Communists (generally known in this period as the "Spartacists" [1]) would come into control—in which case Germany would definitely go the way of Russia. Incited by tireless bolshevik propaganda, and recruited from the Independent Socialists and other extremer groups, the Spartacists scorned parliamentary government, majority rule, and other "bourgeois" devices. Through their newspaper, the *Rote Fahne* ("Red Flag") and inflammatory manifestoes, they called upon the workers of all lands to settle once for all with capitalism, and were bent upon making a good job of it in their own country, their objective being nothing less than the establishment of a soviet system on the Russian pattern, grounded, of course, upon a proletarian dictatorship. Direct action—not haggling over the instruments of political democracy—was to usher in the new era, with the general strike as the favorite means of forcing results.

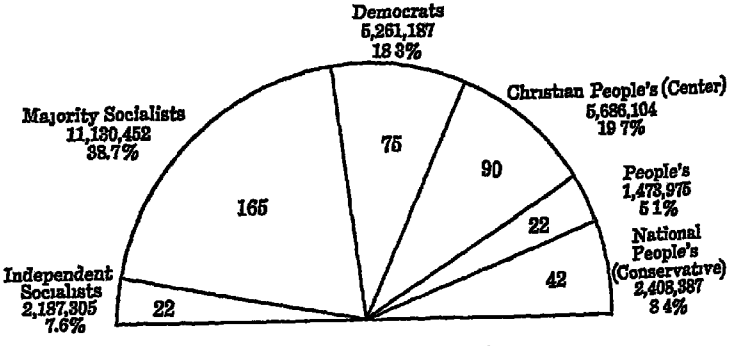
PROBABILITIES

Although the profoundest issue was between the idea of democracy and that of sovietism, the probabilities of the situation lay with the second and third of the possible courses that have been indicated. Monarchist reaction might eventually come, but hardly until other programs had been tried and had failed. On the other hand, the Spartacists, while for a time in control of Munich and other centers, and while long a highly disturbing factor in the situation, proved unable to get a grip upon the country as a whole; and seemed reasonably certain never to be able to break down the attachment of the average German to the things which bolshevism would destroy. As between the two programs of

[1] From the gladiator Spartacus who led a servile revolt at Rome in 73–71 B.C.

THE CONSTITUENT ASSEMBLY AND ITS POLITICAL COMPLEXION

Contemplation of the personnel of the new body revealed a number of significant facts. In the first place, most of the leaders in the old Reichstag reappeared, and, along with them, a large proportion of the rank and file as well. These people, together with additional persons connected with public affairs and business, assured the Assembly a substantial fund of knowledge and experience, and it was generally considered that the level of ability was exceptionally high. Trade-union officials, civil servants, authors and journalists, and representatives of commerce and industry were especially in evidence; lawyers, considerably less so than in the futile Frankfort assembly of 1848. Of interest, too, was the presence of no fewer than 37 women, most of them Socialists. More significant than anything else was, naturally, the Assembly's political complexion; for by this chiefly would be determined the direction in which the new republic's political development would be pointed. In a body more broadly representative by all odds than any previous political gathering in the country's history, every party of any consequence had spokesmen save only the Spartacists. Having renounced political methods, these extremists put up no candidates and took no part in the elections—beyond obstructing them in such ways as they could. As for the rest, the popular votes polled and seats won (disregarding various minor groups) may be depicted as follows:



PRINCIPAL GROUPS IN THE WEIMAR ASSEMBLY
Figures inside the diagram indicate the number of seats won

The make-up of the electorate was so different and the apportionment of seats so changed that comparison of these figures with the statistics of the last Reichstag election held under the imperial ré-

gime (in 1912) is hardly worth while. Without being able to measure it precisely, one is warranted, however, in concluding that there had been a considerable shift toward the left. The National People's party secured less than 10 per cent of the seats in the new body, whereas its predecessor, the Conservative party, had 17.9 per cent of those in the former one. On the other hand, the two socialist parties controlled 43.9 per cent of the seats in the present assembly, as compared with a Social Democratic quota of only 30.3 per cent in the earlier one.[1] The matter of chief significance, however, was that, with the Spartacists absent, the Independent Socialists in a small minority, and the ultra-conservative or reactionary forces not formidable, the Assembly was predestined to be dominated by men and women who would favor proceeding with political reorganization on liberal and moderate lines, to the exclusion of anything resembling sovietism on the one hand or reactionism on the other. With a heavy plurality (although a good deal less than a majority), the Majority Socialists would certainly lead. They, however, could not go far without the support of one or more of the non-socialist parties, and this was an additional guarantee of compromise and moderation. In point of fact, the resulting constitution was the handiwork, speaking broadly, of the Majority Socialists, Democrats, and Christian People's party, or Center—the so-called "Weimar Coalition," substantially continuing the tripartite coalition of moderate, democratic parties formed originally in 1917.

SOME QUESTIONS

Once before—to be exact, 71 years in the past—a great nation-wide popularly elected assembly had addressed itself to the framing of a liberal constitution for a revolutionary Germany. The Frankfort Assembly had failed, and for two generations the country had travelled the road of political illiberalism and reaction. Now that the nation had again been brought, swiftly and unexpectedly, to a pinnacle of opportunity, would the efforts of its reformers be more successful? And if initially so, would the resulting régime endure? Would the people—the question has melancholy pertinence now, although hardly envisaged in 1919—escape from monarchist regimentation only to find themselves encased in a strait-jacket of fascist manufacture?

Notwithstanding widespread public disorder, the Assembly (known officially as the *Deutsche Verfassungsgebende Nationalversammlung*) met promptly on the scheduled date, February 6, at

[1] Of course they would have had decidedly more seats in the Reichstag under an electoral system like that of 1919.

Weimar.[1] There was a good attendance, and the work in hand was entered upon with orderliness and dispatch. The rules of procedure in force in the late Reichstag were adopted; officers were elected, initially revealing a significant tendency of the Majority Socialists, the Democrats, and the Christian People's party to work together, and with a view to tiding over the period until a permanent constitution could be prepared and put into operation, a provisional organic law, forming in effect a temporary constitution, was passed in four days' time, regularizing and expanding the provisional government and defining its relations with the Assembly itself. In association with a chancellor, the commissars—thenceforth to be known by the more conventional name of ministers—were to continue as the supreme executive power. But a president of the Republic was to be chosen by the Assembly, he in turn naming the ministers; and the ministers were to be responsible to the Assembly. In initiating legislative measures for consideration and adoption by the Assembly, the chancellor and ministers were to have the advice of a "committee of the states," a sort of upper house consisting of one or more representatives from each state having a popular form of government. Officially, these arrangements were for the time being only; in point of fact, they foreshadowed (as they were intended to do) various major features of the system about to be written into the permanent constitution. In pursuance of them, Chancellor Ebert was forthwith elected president of the Republic, another prominent Majority Socialist, Philipp Scheidemann, assumed the chancellorship and formed a ministry containing not only Majority Socialists but Democrats and Christian People's party representatives; while the Assembly itself settled into the position of a national parliament, exercising—in addition to its work on the constitution—all of the powers commonly associated with such bodies under democratic systems of government.[2]

THE PROVISIONAL GOVERNMENT REGULARIZED AND EXPANDED

[1] This place, the capital of the little grand-duchy of Saxe-Weimar-Eisenach, was selected partly because of its association with the best traditions of German liberalism, as represented by Goethe and Schiller, and partly in deference to the desire of the south Germans that the convention be held elsewhere than in Prussia. The provisional government, furthermore, wished to shield the gathering from the disorders to which Berlin was constantly exposed.

[2] As has appeared, the French National Assembly of 1871 functioned in much the same way (see p. 419 above). Although not elected primarily for the purpose of making a constitution, it eventually performed that task, and in the meantime—some four years in this instance, as compared with less than six months in the case of the German Assembly—it, like the Weimar gathering, served as the country's principal organ of government.

THE CONSTITUTION MADE AND PROMULGATED

Having converted the purely revolutionary government of Chancellor Ebert into a temporary cabinet government responsible to a popularly chosen body, the Assembly proceeded to its primary task of framing a permanent republican constitution. Students of American constitutional history will recall how greatly the work of the Philadelphia convention of 1787 was expedited by the submission by Edmund Randolph, in behalf of his state's delegation, of the Virginia plan, affording the convention at the very outset a series of concrete proposals upon which to concentrate attention. The same rôle was played at Weimar by a constitutional draft prepared in advance by a committee created by the provisional government and presided over by the indefatigable Democrat, Dr. Preuss.[1] The original Preuss plan was not adopted by the Assembly in all of its major features; its proposal for the dismemberment of Prussia, for example, did not prevail. It nevertheless afforded an excellent starting point for debate, and Preuss himself has ever since been rightly regarded as the chief architect of the new fundamental law.

As was to be expected, much criticism fell upon the Assembly as its work progressed. Moving too slowly to please some, too rapidly to please others, it labored under handicaps, not the least of which was the prevalent disposition to expect it to accomplish more than was humanly possible. The ultra-radical elements professed to see in it and in the temporary government which it had set up the instrumentalities of reaction. Losing their initial enthusiasm, considerable sections of the people became indifferent to its efforts, or grew skeptical as to their success. Disregarding strictures from without, however, and overcoming a tendency to prolixity such as had destroyed the usefulness of the Frankfort assembly, it pushed its deliberations to a conclusion quite as rapidly as the gravity of its task permitted. The proposed instrument was discussed on first

[1] Being a Jew, Preuss had never attained a university professorship. He was, however, a professor of public law in the Berlin Handels-hochschule (Commercial High School), a well-known writer on municipal government, and an accomplished student of constitutional matters. Among his favorite reference books were Bryce's *American Commonwealth*, Lowell's *Government of England*, and Redlich's *Procedure of the House of Commons* After the constitution was made, he wrote voluminously about it, indeed, as an interpretation of a new instrument of government by one who had borne a leading share in framing it, his books—such as *Deutschlands republikanische Reichsverfassung* (2nd ed., Berlin, 1921) and *Staat, Recht, und Freiheit* (Tubingen, 1926)—are worthy of being compared with the *Federalist* of Hamilton, Madison, and Jay, and with Ito's famous *Commentaries* on the constitution of Japan.

reading in February and early March, in committee from March to June, and on second and third readings during July. On July 31—three weeks after the Assembly had performed another important but less agreeable function in ratifying the Treaty of Versailles—the permanent constitution was finally adopted, by a vote of 262 to 75, the opposition coming chiefly from the National People's party and the People's party, at one extreme, and the Independent Socialists at the other.

Notwithstanding that the instrument envisaged extensive future use of the popular initiative and referendum, the Assembly took no action to refer it to a popular vote, or to procure for it any other form of ratification, *e.g.*, by the *Länder*, or states.[1] Accordingly, once approved at Weimar, the constitution was ready to be promulgated; and this step was duly taken, by presidential proclamation, on August 11. The procedure was thus the same as in the case of the French constitution of 1875; and, as in that instance too, promulgation of the new instrument entailed no immediate changes in the government as actually operating. Ebert took the oath of office on the new basis; the existing ministry went on unmolested: the Assembly, pending the election of the first republican Reichstag, continued in the rôle of a national parliament, moving from Weimar to Berlin in September, and disbanding only in June of the following year. During the interval, the body enacted not only numerous laws required for the full carrying out of the constitution (relating, for example, to the election of the Reichstag and of the president), but also many financial and other measures of which the country stood in need.

[1] This aroused no serious criticism. The Assembly had been elected so recently and was so broadly representative that no one could validly dispute its right to speak and act for the nation. In point of fact, none of the new post-war European constitutions was submitted to a popular vote save only that of the German *Land* of Baden.

CHAPTER XXXII

The Republican Constitutional System

NEARLY all of the new written constitutions which sprang into being in the reconstructed Europe of early post-war days—in Austria, Czechoslovakia, Poland, Finland, Yugoslavia, etc. —were lengthy documents; and the first thing that strikes one about the fundamental law of the new German Republic is its sheer bulk.[1]

THE WEIMAR CONSTITUTION:

1. SOME LEADING CHARACTERISTICS

Indeed, aside from one or two state constitutions in our own country, the world had never, down to 1919, seen a lengthier one. At the beginning was a well-worded preamble; at the end, a group of 16 "transitional and concluding articles." Between lay two vast stretches of constitutional matter: Part I, in seven chapters and 108 articles, dealing with the "structure and functions of the Reich"; Part II, in five chapters and 57 articles, devoted to the "fundamental rights and duties of Germans." Experience indicates that constitutions can easily be overdone in this respect; unrestrained elaboration of detail tends to restrict freedom of legislation and otherwise to impede efficient government. It is not difficult to see, however, why a lengthy document should have come from the hands of the Weimar Assembly. The system provided for, if not truly federal,[2] nevertheless involved novel and complicated arrangements as between nation and *Länder*, or states; and these seemed to require definition in con-

[1] The German text will be found in many places, *e.g.*, G. Anschutz, *Die Verfassung des deutschen Reiches vom 11. August, 1919* (14th ed., Berlin, 1933), pp. xi–xxxvii, and F. Marschall von Bieberstein, *Verfassungs-recotliches Reichsgesetz und wichtige Verordnungen* (Mannheim, 1929), 3–81. Convenient English translations appear in H Kraus, *The Crisis of German Democracy*, 179–216, and H. L. McBain and L. Rogers, *New Constitutions of Europe*, 176–212. For the more important portions, see N. L. Hill and H. W. Stoke, *op cit.*, 374–384. Translated texts of most of the post-war constitutions will be found in H. L McBain and L. Rogers, *op cit* Cf. A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), Chap. 1, A Headlam-Morley, *The New Democratic Constitutions of Europe* (London, 1926), Chap. ii, and A. Mendelssohn-Bartholdy, *The War and German Society* (New Haven, 1937), Pt. II, Chaps. vii–xi, on "The Effect of the War on the Constitution of Germany." H. Preuss, *Um die Reichsverfassung von Weimar* (Berlin, 1924), is interesting because of the author's prominent part in drafting the instrument.

[2] See p. 643 below.

siderable detail. Makers of constitutions for federal or quasi-federal governments nowadays, recalling the trouble that uncertainty about division of powers has caused in the United States, usually seek to cover the matter from every angle. In the second place, in their enthusiasm over the long-awaited opportunity to write their ideas into the country's fundamental law, the reform elements—particularly the Social Democrats—naturally were inclined to put into the constitution everything that they wanted to see provided for, thereby, so to speak, nailing their program down. In the third place, the constitution was a product of numerous compromises, not the least of which was a concession to the more radical elements which eventuated in placing in the fundamental law considerable sections, *e.g.*, those relating to economic councils, which otherwise would hardly have found lodgment there. Subsequent events, however, have once more demonstrated that mere elaborateness of constitutional provision is no guarantee of stability and permanence.

Still further characteristics flowed, at least in part, from the circumstances mentioned. The constitution ran on economic, almost as much as on political, lines. Many matters commonly left largely or wholly for regulation by ordinary law were here covered in detail; for example, no fewer than nine articles dealt with the single subject of railways. The status of the individual citizen was nowhere else treated with equal fullness. On the other hand, agreement on many matters could be carried only to a certain point, with the result that provisions on a subject sometimes started off with assurance, only to come to a sudden stop or evaporate in more or less meaningless generalities. Because, furthermore, of lack of information ready to hand, as well as because of inability to agree, numerous subjects were expressly—no doubt sometimes fortunately—earmarked for later regulation by ordinary law. And many of the rights guaranteed were explicitly made subject to curtailment as later law should provide or direct.

2. SOURCES

The sources from which the constitution's architects drew were many and varied. To some extent, they were foreign—chiefly French, Swiss, and American.[1] Far more largely, however, they were German. First of all, there was the constitution of the recent Empire. From it was salvaged whatever seemed appropriate, and here and there the old phraseology reappeared substantially without change; even the term *Reich*,

[1] H. Holborn, "The Influence of the American Constitution on the Weimar Constitution," in C. Read (ed.), *The Constitution Reconsidered* (New York, 1938), 285–296

which commonly had been thought of as denoting "empire," was preserved, with the new meaning of "realm," or, perhaps better, "commonwealth." Two other historic German documents contributed materially—(1) the ill-fated Frankfort constitution of 1848, which, although still-born, had for 70 years been carried in men's minds as a program, and (2) the Social Democratic party's Erfurt Program of 1891. In its hour of opportunity, German liberalism was indeed fortunate in having rich native, as well as foreign, resources upon which to draw.

3. PROVISIONS FOR AMENDMENT

The constitution of imperial days could be amended in exactly the same manner in which ordinary laws were enacted, *i.e.*, by simple majority vote in the Bundesrat and Reichstag, save only for the limitation that any amendment was regarded as rejected if as many as 14 votes were cast against it in the Bundesrat. For amending the republican constitution, no fewer than four procedures were provided in the instrument, as follows: (1) a two-thirds vote in both Reichstag and Reichsrat; (2) a two-thirds vote in the Reichstag alone, provided that the Reichsrat, in disagreeing, did not within two weeks demand that the amendment be referred to the people; (3) a two-thirds vote in the Reichstag, followed by approval by the people, in case the Reichsrat called for a referendum; and (4) popular initiative, followed by a referendum and adoption of the proposal by majority vote. Joining, as it did, the initiative and referendum with action by the legislative bodies, the amending process bore closer resemblance to that of Switzerland than to any other in Western Europe, although there is the important difference that in the smaller republic no amendment can be finally adopted without a vote by the people. Unlike the situation under the Empire, no single state could by a determinate act permanently block a proposed amendment. Prussia, to be sure, had more than enough votes in both Reichstag and Reichsrat to prevent a proposal from being passed in either body by a two-thirds vote. But, in the first place, there was no constitutional requirement similar to the old one under which Prussia's (and every other state's) votes in the Bundesrat were cast in an indivisible block under a single mandate. In the second place, rejection of an amendment in the Reichstag, which the concentration of all Prussian votes on the same side of a question might conceivably bring about, could have no effect—if the sponsors of an amendment were disposed to press their case—beyond compelling the proposal to be submitted to the people. Finally, there was nothing to prevent any proposal, if blocked in the Reichstag, from being

taken up by the electorate and adopted by its own independent action.

EARLIER AMENDMENTS AND LATER SUSPENSIONS

Manifestly, the constitution's makers intended that the nation should find no difficulty in revising its fundamental law whenever it chose, and during the decade 1919–28 almost a dozen amendments were adopted, commonly by vote of the Reichstag with concurrence of the Reichsrat.[1] Thus in 1921 an amendment made important changes in the representation of the *Lander* in the Reichsrat.[2] In 1926, another one extended parliamentary immunities to members of Reichstag committees during intersessional and interparliamentary periods. At no point, however, were the fundamentals of the governmental system touched until the stormy period of the Hitlerian dictatorship. Even during the troubled years 1930–32, when parliamentary government was largely in abeyance and "presidential dictatorship" was fast paving the way for Nazism, the measures employed—not stopping short of assumption of complete control over the government of Prussia by the government of the Reich—did not alter the form of the fundamental law, and indeed were not on their face contrary to it. Rather, they were in pursuance of the instrument's famous Article 48, conferring upon the president of the Republic extraordinary powers for the preservation of "public safety and order."[3] Again when, in March, 1933—two months after Hitler became chancellor—the Reichstag and Reichsrat enacted (in a measure "to combat the national crisis") that up to April 1, 1937, national laws might be made "by the national cabinet as well as in accordance with the procedure established in the constitution," and that the laws so enacted might "deviate from the constitution in so far as they did not affect the position of the Reichstag and Reichsrat,"[4] the constitution was not technically amended, but rather simply pushed aside for a period in respect to those of its provisions which undertook to specify the ways in which laws should be made. As time went on, government became more and more an extraconstitutional affair, and, as will be pointed out in a later chap-

[1] The courts held that *any* statute passed by a two-thirds vote in the Reichstag was to be accepted as a constitutional amendment if it were such in substance This facility of amendment may be regarded as having had a deleterious effect, for the heaping up of constitutional amendments by so easy a procedure tended to destroy the "constitutional conscience" of the nation, rendering far-reaching and revolutionary changes by ordinance and *coup d'état* less shocking.

[2] See p 666 below.

[3] See p. 680 below. Undoubtedly the measures referred to strained Article 48 to the limit, but officially all of them were grounded upon it.

[4] For text, see J. K Pollock and H. J Heneman, *The Hitler Decrees* (2nd ed., Ann Arbor, Mich., 1934), 4

ter,[1] changes of the most drastic character—abolition of the Reichsrat in 1934 and merging of the powers and functions of the president with those of the chancellor-*Fuhrer* in the same year—were introduced with no attempt at all to rephrase the constitution's text. With the Weimar instrument simply gathering dust, the actual working scheme of government is today subject to modification in any and all of its parts by arbitrary executive decree.

REICH AND "LÄNDER": THE PROBLEM OF FEDERALISM

Two questions of major import in the Weimar debates of 1919 were: (1) Should the federal form of government be preserved?, and (2) Should the states be left with boundaries and names as they had been under the Empire? In behalf of federalism, it could be urged that it was in line with lengthy German tradition and experience; that several of the states were political entities rooted deeply in history and both desirous and deserving of maintaining something of their former position; and that while the lesser states, especially in the south, had been jealous of Prussia's preeminence under the Empire, a consolidated, unitary system would be likely to mean a Prussianization of the whole, which would be even less agreeable. There were, however, strong considerations and influences the other way. Federalism was regarded as having many inherent disadvantages, and as being generally on the decline throughout the world. Not even the far-reaching guarantees of states' rights in the imperial constitution had availed to prevent steadily increasing centralization in Germany in the decades before 1918—in finance, in military arrangements, in the interpretation of "reserved rights," in administration—a trend evidenced not only in formal constitutional amendments, in legislation, in agreements between imperial and state authorities, but in the general sweep of usage and custom as well. Long before 1914, powerful elements had favored suppressing the states altogether, or at all events subordinating them under a strictly unitary system; and although those elements had been chiefly of the militarist and imperialist persuasion, there were liberal-minded men in the Weimar Assembly who argued that post-war Germany could hope to maintain herself in the face of her victorious enemies only if her people were marshalled under a single, centralized government—only if organized in an *Einheitsstaat* rather than a *Bundesstaat* as of old. It remained, however, for a program of this sort to be carried out by the Hitler dictatorship more than a decade later.

[1] See Chap xxvii below.

QUESTIONS OF POLITICAL GEOGRAPHY: PRUSSIA

Deeply involved in the problem was the further question of redrawing the political map of the country. External boundaries were changed perforce, through compulsory relinquishment of upwards of 35,000 square miles of territory under terms of the Treaty of Versailles;[1] and a provision of the new constitution looking to the absorption of Austria into the Republic was rendered of no effect by action of the Supreme Council of the Allied and Associated Powers.[2] But the essential question was as to whether, assuming that states were to continue to exist (on a federal basis or otherwise), the number and boundaries of such divisions should go on as before. The nub of the matter was the future of Prussia. Long before the War, the criticism had been heard that imperial Germany was not a true Reich at all, but only (as Bismarck really intended it should be) a masterful Prussia surrounded by minor states in varying degrees of vassalage. Inclined at best to particularism, and

[1] Border lands populated largely or mainly by non-Germans were assigned to the newly created republics of Czechoslovakia, Poland, and Lithuania In the north, Denmark by plebiscite acquired a large part of the old duchy of Schleswig On the west, a rectification of frontiers gave Belgium the districts of Eupen and Malmédy. Alsace and Lorraine were returned to France. Indeed a belt of territory populated heavily by Germans and cutting across Prussia from the Polish borders to the North Sea—the much-discussed "Polish corridor"—was given to Poland, thereby isolating thousands of square miles of east Prussian soil from the remainder of the Reich. On the other hand, the coal-bearing Saar Valley, placed under the jurisdiction of the League of Nations for a period of 15 years, with a view to a decision by the inhabitants at the end of that time as to whether to remain with Germany or to join France, voted heavily in January, 1935, for continuance with Germany. And after the question had all but precipitated Europe into general war, 11,500 square miles of border territory, inhabited mainly by Germans, were taken from Czechoslovakia in the autumn of 1938 (later, nearly all of the remainder of the Czechoslovak Republic was converted into a German protectorate) Memel, too, was recovered by Germany in 1939. And at the moment when these pages went to press (September, 1939), German armed forces had seized Danzig and subdued Poland—with ultimate results depending on the outcome of a general European war which these actions precipitated. On the arrangements made in 1919 and the problems to which they gave rise, see W H. Dawson, *Germany Under the Treaty* (New York, 1933), Chaps. III, V–VIII.

[2] Article 80 of the Versailles treaty bound Germany to "respect strictly the independence of Austria" Discovering in Article 61 of the Weimar constitution a provision for the representation of Austria in the Reichsrat "after its union with the German Reich," the Supreme Council first pronounced the offending section null and void and afterwards, on August 11, 1919, forced Germany to sign a diplomatic act making similar declaration For almost two decades thereafter, the question of the *Anschluss*, *i.e.*, the union of Austria with Germany, remained a disturbing factor in European politics, until finally, in the spring of 1938, Hitler defiantly—and with impunity—brought about the desired annexation Although after 1919 only a fragment of its former self, Austria alone, as absorbed in 1938 and renamed the Ostmark, very nearly compensated the Reich for its territorial and populational losses as a result of the War. Cf. P Slosson, "The Problem of Austro-German Union," *Internat. Conciliation*, No. 250 (May, 1929).

holding Prussian leadership chiefly responsible for the misfortunes that had befallen the country, Bavaria and other southern states were so separatist-minded by 1919 that there was actual fear lest they break away and set up for themselves if Prussia were not dismembered or otherwise put under restraint. In the event that the country as a whole should hold together, there must, in the difficult days to come, be more unity and centralization. Yet if Prussia remained intact, would not this merely enhance her power? Moved by considerations such as these, the Preuss commission proposed that the states be evened up in area and population by dividing Prussia into from seven to nine states and combining the others into approximately the same number, giving a total of perhaps 15, which should then be organized in a strictly federal republic.[1] As further justification for the scheme, it was argued that Prussia was historically only a polyglot, artificial combination of territories swept together by conquest and dynastic marriages, with hardly more natural unity than the now dissolving Habsburg dominion farther south.

There were, however, plenty of obstacles. Who should assume authority to work out the division? On what basis, *e.g.*, by plebiscite or otherwise, should the new grouping be made? If more unity was desired, was not the dismemberment of the largest of the states a poor way to go about attaining it? Could not Prussian dominance be curtailed without breaking the state in pieces? As for Prussia herself, she naturally offered stiff opposition, arguing that dismemberment would be a sorry reward for bearing the brunt of the war, and that through the collapse of the Hohenzollern dynasty—not to mention losses of territory under the peace treaty—she already had lost much of her privileged position and importance. As for the other larger states, they too—particularly Bavaria—cooled toward the proposal when it dawned upon them that if Prussia were dismembered they might not escape a similar fate.[2]

CONSTITUTIONAL PROVISIONS AND RESULTING CHANGES

In the end, the constitution's makers dropped the issue and contented themselves with writing into the completed instrument an article declaring that the division of the Reich into states—thenceforth to be known as *Lander*[3]—was designed to "serve the

[1] Dr. Preuss himself strongly favored a unitary system, or at all events as great a degree of unity as could be achieved, and eventually became an opponent of Prussian dismemberment.

[2] On the controversy in the Assembly and the various proposals that were made, see R Brunet, *The New German Constitution* (New York, 1922), 43–57.

[3] Meaning, literally, "areas" or "territories," and carrying no such suggestion of political vigor as does the term *Staaten* ("states").

highest cultural and economic progress of the people" and stipulating that in future new *Länder* might be created and boundaries changed by constitutional amendment, or even by ordinary law, provided that all *Länder* directly affected should give their assent, or that, in the absence of such assent, a plebiscite taken in the areas concerned should yield a three-fifths affirmative vote, with at least half of the eligible electors voting.[1] Nor did these provisions for "mobility of frontiers" prove a dead letter. Prussia was never divided;[2] on the contrary, she gained additional territory from subsequent readjustments affecting other *Länder*. But in 1920 a new *Land* of Thuringia came into being, consolidating as many as seven little states of earlier days;[3] in the same year, the Coburg portion of the duchy of Saxe-Coburg-Gotha joined Bavaria, the remainder casting in its lot with Thuringia; in 1922 the Pyrmont section, and in 1929 the Waldeck division, of Waldeck-Pyrmont united with Prussia; and altogether the number of states was reduced from 25 under the Empire to a total of 17, where it stood for years, until in December, 1933, under the auspices of the Hitlerian dictatorship, Mecklenburg-Strelitz was united with Mecklenburg-Schwerin to form the single state of Mecklenburg.[4] By the last date mentioned, as will appear, the *Länder* had been so completely stripped of their powers that it did not greatly matter how numerous or few they were.

GENERAL POSITION OF THE "LÄNDER" UNDER THE WEIMAR CONSTITUTION

Far from suppressing the former states, however, the Weimar constitution accepted, recognized, and perpetuated them; it even gave their governments representation in a federally constructed body, the Reichsrat,[5] corresponding structurally if not functionally to the old Bundesrat. Their general position under the new plan was, however, very different from before. In the first place, they did not have ultimate control over their territorial limits, or even assurance of permanent existence; under specified conditions, they could be dismembered, or even blotted out completely, by the government at Berlin. In the next place, they were not free, as they had been under the Empire, to

[1] Art 18. Compare the insecurity of the states resulting from this article with the guarantees of statehood laid down in Art. IV, § 3, of the constitution of the United States.

[2] Except for the territories lost by the peace treaty.

[3] This consolidation had passed through its initial stages before the Weimar constitution took effect.

[4] In 1922, the Upper Silesians voted against setting up separately, as did, two years later, the inhabitants of the old Hanoverian portions of Prussia On the general subject, see H Kraus, *Germany in Transition* (Chicago, 1924), Chap. VI

[5] See pp. 666-667 below.

decide for themselves what form of government they would have. By strict injunction of the Weimar instrument, every one must maintain a republican government, with representative assemblies (both state and municipal) elected by "universal, equal, direct, and secret suffrage of all German citizens, both men and women, according to the principles of proportional representation," and must have a responsible cabinet.[1] In the third place, re-labeled with the politically colorless term *Lander*, they were restricted to powers which, in themselves small, rested only upon the precarious basis of a constitution that could be amended unilaterally by the national government (*i.e.*, the Reichstag and Reichsrat, or even the Reichstag alone), and that, therefore, could at any time be shifted, regardless of the *Lander*, to the advantage of the Reich.

NOT A TRULY FEDERAL SYSTEM

In the light of these fundamental weaknesses in the position of the *Lander*, it is difficult to see how the new system can properly be regarded as federal. Many German writers, to be sure, have contended that it was such. The *Lander*, they point out, had original existence, antedating the new Reich, their powers were residual, as are those of the states in the United States, and in practical operation the scheme in general undoubtedly looked federal. If, however, true federalism requires a distribution of public powers between a central government and a set of divisional governments on such lines that neither central government nor divisional governments can alter it by their own independent action, the Weimar system does not qualify. If our government at Washington could independently withdraw any and all powers from the states, take from Texas half of its territory, and annex Rhode Island to Connecticut, we certainly should no longer think of ourselves as having a federal form of government. Germany under the Weimar constitution had a governmental system from which the historic stamp of federalism had by no means been erased, and popular concepts of the system ran largely on federal lines. But in the final analysis the system was unitary.[2]

[1] Art 17.

[2] It is only fair to observe that while some German constitutional lawyers were of this opinion, the majority clung to an opposite view—while still others, baffled by the problem, were inclined to brush it aside as of only theoretical importance; and certainly whatever of federalism there was in the system has long since been obliterated by the Nazis For a scholarly discussion of the subject, see R. Emerson, *State and Sovereignty in Modern Germany* (New Haven, 1928), 236–253. The only other post-war European constitution which contemplated arrangements to any degree approximating federalism was that of Austria. See A. Headlam-Morley, *The New Democratic Constitutions of Europe*, Chap. iv; A J. Zurcher, *The Experiment with Democracy in Central Europe*, Chap. iii.

DISTRIBUTION OF LEGISLATIVE POWERS

Particularly significant were the arrangements for legislation. Under the Empire, the national government had exclusive legislative power over a few matters, *e.g.*, customs duties and the navy, and concurrent power with the states over a longer list. The bulk of legislation was, nevertheless, enacted and enforced by the states. Under the Weimar constitution, on the other hand, national legislative authority was carried about as far as was possible without depriving the *Lander* of all reason for having legislatures at all. First of all, the Reich had power to legislate exclusively on a wide range of subjects—foreign relations, colonial affairs, citizenship, immigration and emigration, national defense, currency, customs duties, and postal, telegraph, and telephone services.[1] In the second place, it had unrestricted, although not exclusive, power to legislate on other vital matters such as civil rights and relations, criminal offenses, judicial procedure, poor relief, the press, the right of association and of assembly, public health, trade, industry, mining, insurance, railways, and the "socialization of natural resources and of economic undertakings."[2] The *Lander* might legislate on these subjects so long as, and in so far as, the Reich did not do so; but Reich legislation, once enacted, took precedence; and it may be added that most of the fields of concurrent action (especially those related to social welfare) were in practice rapidly preempted by the Reich. Power to tax (including full control over all taxes the proceeds of which went to any extent into the national coffers) was conferred also, subject only to the requirement that if the Reich laid claim to taxes or other revenues formerly belonging to the states, due consideration should be given to the latters' financial needs.[3] Finally, the Reich was authorized to lay down "fundamental principles" on various subjects—taxation, land titles and distribution, education, religious associations, and others—for the guidance of subordinate legislative bodies.[4] To be sure, Great Britain and the United States are familiar with the fixing of norms or standards by national authorities, notably in connection with various forms of grants-in-aid. General constitutional provisions for "normative legislation" are, however, unusual.

THE SUPREMACY OF NATIONAL LAWS: JUDICIAL REVIEW

The supremacy of the Reich in the domain of legislation would have been pretty well established by the foregoing provisions alone. The matter was clinched, however, by a clause of the constitution—of similar purport to a well-known provision of the constitution of the United States[5]—which tersely declared national

[1] Art. 6. [2] Art. 7. [3] Art. 8. [4] Art. 10. [5] Art. VI, § 2.

laws "superior" to the laws of the *Länder;* and whereas, in our own country, the question of how conflicts between national and state laws were to be legally resolved was left to future settlement, the Weimar constitution itself explicitly provided for decision by a "superior judicial court." [1] A limited amount of judicial review existed under the Empire; courts of due competence could inquire whether an imperial or state law had found its way to the statute-book in the regular manner, and the Supreme Judicial Court (*Reichsgericht*), sitting at Leipzig, could, and did, decide whether state laws were in conflict with imperial law, and therefore unenforceable. The Weimar constitution recognized no general function of judicial review on lines comparable with those that have come to prevail in the United States. But it perpetuated the form of review practiced by the *Reichsgericht* before 1918; and whereas the constitution spoke only of questions of conflict of law raised by "the competent national or state authorities," the Supreme Court presently accepted jurisdiction also in situations where the issue was raised merely by private individuals. Furthermore, whereas the constitutional provision made mention of the constitutionality of state laws only, the Supreme Court as early as 1925 declared itself competent to pass on the substantive validity of national laws as well. Germany became, therefore—and, until the Nazi era, remained—one of the several countries of Continental Europe in which judicial review has been developing on a scale to attract world-wide attention.[2]

ARRANGEMENTS FOR ADMINISTRATION

Under the Empire, national laws were enforced largely by state, rather than by imperial, authorities. The Weimar constitution continued the arrangement; indeed, by providing that national laws should be executed by the authorities of the states in so far as the laws did not themselves stipulate otherwise,[3] it clearly set up a presumption in favor of state execution. All measures, nevertheless, on matters over which the Reich had *exclusive* control were now enforced by national authorities (this had not previously been the case), and likewise national laws on financial matters, even though the legislative functions of the Reich in that domain were, of course, not exclusive.

[1] Art 13

[2] As will appear, there is, of course, no place for judicial review under the Hitler dictatorship The development of the practice in Germany is discussed in J Mattern, *op. cit*, 570–613, C. J. Friedrich, "The Issue of Judicial Review in Germany," *Polit. Sci Quar.*, June, 1928, and C G. Haines, "Some Phases of the Theory and Practice of Judicial Review of Legislation in Foreign Countries," *Amer. Polit. Sci. Rev.*, Aug, 1930.

[3] Art. 14

This made a good deal of difference, and the upshot was that the administrative activity—and consequently the administrative machinery—of the new national government became considerably more extensive than that of the old one. Control from Berlin over state officials when engaged in administering national laws was increased also. Compulsory instructions could be issued; and whereas in former times imperial commissioners—although permitted to be in direct touch locally with state functionaries charged with enforcing national laws—could criticize or guide such functionaries only by acting through the state governments, considerable leeway for direct control was now allowed. In short, the Reich relied less heavily than before upon state authorities for the administration of its laws, and it controlled them more fully and directly in the exercise of such functions as remained. Although worked out on different lines, central control over local administration had, even before the drastic changes of 1932–33, become almost equally extensive in Germany and France.[1]

"FUNDAMENTAL RIGHTS AND DUTIES OF GERMANS"

Aside from a guarantee of equal treatment for natives and non-natives in every German state, and of equal protection for all as against foreign states, the constitution of the old Empire was virtually silent on the status of the individual citizen or subject; certainly it contained nothing in the nature of a bill of rights. This does not mean that the German before 1919 had no legally recognized rights. On the contrary, he had, under state constitutions and laws, and especially under imperial laws, so long a list of guaranteed rights that a leading German jurist once ventured the opinion that these rights were even more extensive than in many states in which rights were constitutionally catalogued.[2] For this reason, the Weimar constitution's remarkably lengthy enumeration of fundamental rights, although regarded by many Germans of the time as their own most important contribution to the new order, was less significant —certainly less of an innovation—than has sometimes been supposed. It nevertheless challenges attention on a number of grounds.

The entire second part of the constitution was, indeed, devoted to "fundamental rights and duties"—42 articles to what may be regarded as a bill of rights in the usual sense, and 15 more to provisions on the special subject of "economic life." In view of such elaborateness, it is interesting to observe that there was much difference of opinion at Weimar upon the desirability of including

[1] J. Mattern, *op. cit.*, Chap. vi.
[2] Georg Jellinek, *Menschen und Bürgerrechte*, 7.

general provisions on private rights at all. In its first form, this portion of the instrument was comparatively brief; Dr. Preuss favored omitting it altogether. The great body of German law under which rights had up to now been protected was expected to continue largely intact; and, recalling that the constitution of 1848 had fallen to the ground partly because of being overweighted with controversial provisions of the kind, Preuss and others considered that it would jeopardize no essential interests, and in general would be more expedient, to put little or nothing on the subject into the new instrument. Some delegates, however, wanted to go even beyond the lengths eventually reached, and the upshot was—by compromise, as usual—the insertion of a series of provisions which for sheer number and detail exceed anything of the sort to be found in any earlier constitution.

EMPHASIS ON SOCIAL ASPECTS

Like French and American declarations or bills of rights, Part II of the Weimar constitution started off with an imposing list of rights of the individual—equality before the law, liberty of travel and domicile, freedom of person, freedom of speech.[1] But whereas bills of rights elsewhere usually did not go far beyond seeking to protect the individual, as a personal entity in the body politic, the Weimar constitution quickly advanced to an even more arresting enumeration of rights, guarantees, and maxims pertaining to people in groups. The instrument contained less than might have been expected that was *socialistic*, but it abounded in provisions that were *social*. The "great state," as envisaged, was no mere aggregation of individuals, but rather a compact, closely integrated body of people, and the supreme objective was not the maximum of individual freedom but the highest

[1] The provision is that all "Germans" are equal before the law, etc. Beyond providing (a) that "every citizen of a *Land* is at the same time a citizen of the Reich," and (b) that citizenship of the Reich and the *Lander* is "acquired and lost in accordance with the provisions of a Reich law" (Art. 110), the constitution did not attempt to deal with the thorny subject of citizenship. An imperial national-and-state citizenship law of 1913, giving precedence to state citizenship over Reich citizenship, remained in force, and as a result Germans continued under the Republic to be citizens primarily of Prussia, Bavaria, Baden, or other *Lander*, even though, under Article 110 quoted above, by being such they automatically became Reich citizens as well. The arrangement proved far from satisfactory, and opinion became rather general that national citizenship should be made primary and state citizenship only secondary, as, for example, in the United States, where, it will be recalled, a similar problem long caused difficulty. It remained for the Nazis, adept at cutting Gordian knots, to accomplish the desired end, even though by characteristically unconstitutional methods First of all, Jews were in effect excluded from citizenship (in 1933), as not being of "German blood" Then the *Länder* were virtually extinguished. And finally, by decree of February 5, 1934, state citizenship was formally abolished and the pertinent portions of the nationality law of 1913 repealed. "There is only one German citizenship," affirmed the decree—"national citizenship."

realization of community and national well-being. Hence one found a lengthy series of provisions concerning "community life"; another concerning religion and religious associations; still another on the subject of education and schools. Intermingled with stipulations in these sections concerning group interests and activities were further guarantees to the individual—freedom of petition and of political opinion, eligibility to public office, religious liberty. But the emphasis throughout was upon private rights as conditioned by the duty of the individual to subordinate his personal interests to the well-being of the collectivity; and *duties*—rendering personal services to the state and the municipality, contributing financially, and performing military service—were everywhere bracketed with *rights.*

CONSTITUTIONAL AND PRACTICAL LIMITATIONS

The weight to be attributed to many of the provisions was, it must be conceded, doubtful even before developments under the Hitler régime gave all of them a profoundly ironical aspect. To begin with, one found, over and over, this sort of thing: "Every German's house is his sanctuary, and is inviolable. Exceptions may be made only as provided by law." That is to say, broad acknowledgment of a general right was immediately followed by provision for curtailing or abrogating the right by Reich, and often (as in the case cited) by either Reich or state, law. In addition, Article 48 gave the president power, in time of emergency, to suspend as many as seven different articles guaranteeing rights. Rights under most constitutions, including those of our own country, are commonly subject to curtailment under certain conditions, *e.g.*, in war-time. But the unusual extent to which the Weimar constitution gave with one hand and took away with the other imparted to the entire instrument, as a leading German constitutional lawyer once admitted, "a rather equivocal character." In the second place, this portion of the constitution, taken as a whole, was a strange *mélange* of political precepts, economic theories, and legal commands. Much of it, in the opinion of a majority of German lawyers, was of such a character as to have (even under normal conditions) no legal value whatever. There were provisions so phrased and so articulated with existing facts as unmistakably to be of the nature of law, abrogating all contradictory provisions of antecedent laws. There were others which merely indicated the course that should be followed in the regulation of given matters, abrogating nothing, but charting out lines that in the opinion of the constitution's makers ought to be followed in the future. There were still others which did not go beyond declaring

general principles—frequently very ordinary philosophico-legal commonplaces at that—or recording good intentions.

THE "ECONOMIC CONSTITUTION"

The program of the Social Democrats had always emphasized economic equally with political matters, and it was to be expected that the Weimar constitution, in common with post-war constitutions generally, would contain much on such subjects. Starting with the fundamental concept that a supreme function of the state is to assure the social and economic well-being of the individual and the economic prosperity of the people as a whole, the document first laid down certain broad principles, *e.g.*, economic liberty of the individual, freedom of trade and commerce, freedom of contract, and then devoted itself chiefly to three matters: property and its socialization, the status of labor, and a scheme for workers' and economic councils. Evidence of the essential moderateness of the constitution is supplied by the fact that, although colored by socialist ideology, it definitely recognized and guaranteed private property, with the correlative right of inheritance. To be sure, property must be used in ways consistent with the well-being of the collectivity. But expropriation was declared permissible only "for the public benefit," "on a legal basis," and with compensation rendered unless a Reich law should order otherwise. Unearned increment in the value of land was, however, to be used "for the common benefit"; and one of the instrument's famous articles (156) looked cautiously toward progressive socialization of property and businesses of all kinds by providing that the national government might—with due regard for compensation—"transfer to public ownership private economic enterprises suitable for socialization." In point of fact, little had as yet been done in this direction when, in 1933, the National Socialists came into power. As for labor, the national government was required to take it (including intellectual work as well as other kinds) under special protection, to enact a uniform labor law, and to maintain an extensive system of health, old age, and other forms of social insurance; and another notable article (165) called upon laborers and employees to cooperate on equal terms in regulating conditions of work and wages, "and also in the general economic development of productive forces."

WORKERS' AND ECONOMIC COUNCILS

Following this last-mentioned provision came the constitution's interesting scheme for a system of workers' and economic councils. The plan, no doubt, was inspired in part by the soviet idea, and to that extent (although intended to operate on a bourgeois basis) was in

the nature of a sop to the radical elements. It was, however, a logical device for effectuating the economic democracy—the working-class right of co-decision—so long contended for by the Social Democrats, and it had significant precedent as far back as 1880, when Bismarck himself gave representation to agriculture, commerce, and even labor, in a Prussian economic council. To begin with, there was to be a hierarchy of "workers' councils," composed of wage-earners in all industry, and starting in the individual factory at the bottom, with other councils organized on a regional or district basis, and a national council at the top—the whole paralleled (so it was intended) by corresponding sets of employers' councils. In the second place, there were to be "economic councils" —one in each district and one for the nation as a whole—each consisting of representatives of the appropriate workers' council together with spokesmen of employers "and other interested elements of the population," so blended that all important vocational groups would be represented "in accordance with their economic and social importance."

As a mechanism for promoting industrial democracy, improving the relations of workers and employers, and giving the government the benefit of expert economic advice, the system as outlined had a good deal of attractiveness. Various circumstances, such as the depressed condition of industry, jealousy on the part of the trade unions,[1] and the fact that the plan envisaged a type of public organization not wholly compatible with the purely political system provided for in earlier portions of the constitution, prevented it, however, from being realized to any great extent in practice. The district economic councils were never set up; and although a National Economic Council came into being in 1920, it functioned on only a "provisional" basis and never attained the full powers contemplated for it in the constitution.[2] With a membership of 326 persons, arranged in 10 occupational groups (in six of which workers and employers were represented equally), and functioning mainly through committees, it nevertheless, in the first 10 years of its existence, rendered useful service in considering proposed economic and social legislation, initiating occasional measures for parliamen-

[1] The unions instinctively disliked the council plan and were won over to it only after being assured that their own existence and normal activities would not be interfered with. In practice, it was next to impossible to keep the fields of the councils and the unions distinct, and the latter were largely of the opinion that the councils were useless. Many employers' associations were inclined to agree with them.

[2] For the measure creating it, see F. Marschall von Bieberstein, *op. cit.*, 372–387.

CHAPTER XXXIII

Parliamentary Institutions under the Weimar Régime

ONLY late, and with great difficulty, did Germany arrive at anything approaching genuine parliamentary government. Popular election of legislative bodies was introduced in most of the states during the second quarter of the nineteenth century, and a popularly chosen national legislature, first authorized in the constitution of the North German Confederation of 1867, became, in 1871, the well-known Reichstag of the imperial period. In the states, however, the suffrage was as a rule highly restricted; in Prussia, the three-class system left most of the voters with little actual electoral power; every state except three was a monarchy; nowhere did ministers recognize responsibility to any representative body. In the Empire, too, as we have seen, although arrangements for the suffrage were reasonably liberal, ministerial responsibility was unknown and the Reichstag, as a German writer has put it, was allowed merely "to bark but not to bite." Great Britain, France, Italy, Belgium, the Netherlands, Switzerland, and in fact nearly all of Europe west and south of Germany and Austria-Hungary had the forms, and much of the reality, of popular government at a time when Germany was an almost unbroken scene of absolutism, oligarchy, and bureaucracy.

THE HARD ROAD TO PARLIAMENTARY GOVERNMENT

From far back in the nineteenth century, voices were raised in protest, and the last two decades before the World War witnessed a persistent liberal movement, which, stimulated by the hardships and disasters of the war years, swept from triumph to triumph in the hectic summer and autumn months of 1918. So far as paper decrees and promises could make it so, popular government was a reality even before the Armistice. Paper decrees and promises, however, proved unavailing, what remained of the old régime crashed to destruction, and the forces (mainly the Social Democrats) which so long had fought for a new political order took command. On a virtually clean slate, the "Weimar Coalition" [1] proceeded to write a new fundamental law; and the easiest decision that it had to make

[1] See p 631 above.

was that the government of the future should be built around a great central democratic parliament which, on the one hand, should translate the will of the nation into law and, on the other, through ministerial responsibility, should subject the processes of administration to popular scrutiny and restraint. From being merely tolerated as a "fifth wheel," the Reichstag became (at all events was *expected* to become) a flywheel, to which the entire mechanism of government was geared, and by which it was to be kept in balance.

LOSS OF THE GROUND GAINED

Thirteen years passed, and the wheel—already slowed down by steadily growing friction—was stopped. Executive authority, acting at first under emergency provisions of the constitution, took the lever. Later, in the form of undisguised dictatorship, it pushed the constitution aside and repudiated all connection with "parliamentarism." To be sure, the Reichstag—unlike the second chamber, or Reichsrat (abolished in 1934), and also the now extinct diets of the *Lander*—has been permitted to survive. But it is convoked only rarely, for a few hours at a time, and merely in order that it may hear and shout approval of a speech by the Fuhrer, or, at most, go through the formality of acclaiming dictatorial measures already decided upon. Perhaps representative government, now so utterly dead, will one day be revived; perhaps not. But, whatever the future holds in store, the experiment with parliamentary institutions under the Weimar system offers the student of comparative government an interesting and instructive, even though melancholy, chapter; and to that matter we now turn.

A QUALIFIED BICAMERAL SYSTEM

Taking for granted a broadly democratic Reichstag, the architects of the Weimar constitution had only to consider whether there should be a second chamber, and if so, of what nature. There were those who, rejoicing in the collapse of the old Bundesrat, thought, with the British Labor party and the French radical groups, that one truly representative chamber is all that a democracy requires. Though differing on questions of detail, the great majority of delegates were, however, favorable to fitting into the new system a body that should perpetuate the traditional representation of states as such; and accordingly a Reichsrat was provided for, composed of delegations from the governments of the *Lander*, although so hedged about with restrictions that some people preferred to think of it as no true branch of a legislature at all, and therefore of the system as to all intents and purposes unicameral. Even the parliament that sits at Westminster would not be bicameral, however, if one were

to insist upon constitutional parity for the two houses as a necessary condition.

ELECTING THE REICHSTAG:

1. THE SUFFRAGE

Throughout Central Europe, millions of men and women first became voters when the post-war constitutions were adopted, and nowhere was the principle of democratic suffrage given more literal application than in Germany. Before the War, only men 25 years of age and over were Reichstag electors. For a generation, however, the Social Democrats had advocated universal suffrage at the age of 20; and in the Weimar Assembly (itself chosen on this basis) it was decided with no great amount of controversy that the Reichstag should thenceforth be elected by "universal, equal, direct, and secret ballot by men and women over 20 years of age."[1] At a stroke, the electorate was considerably more than doubled.[2]

NON-VOTING

For a country in which parliamentary powers were as scant as in Germany before the War, the proportion of registered voters who went to the polls (never below 60 per cent between 1886 and 1912, and rising to 84.9 per cent in the last-mentioned year) was high—quite as high, in fact, as in Great Britain and France. The Reichstag of those days may not have been the center of political gravity, but it stirred interest as an organ of protest. The record under the Weimar régime was good, but hardly better—save in the sense that, whereas in Great Britain and the United States the first trials of woman suffrage produced a heavy slump, no falling-off in Germany was traceable to that source. The election of the Weimar Assembly brought 82.68 per cent of the registered electorate to the polls, the Reichstag elections of 1920, May, 1924, December, 1924, and 1928, drew from 75.5 to 79.2 per cent; that of July, 1932, 84 per cent; and that of November, 1933 (with endorsement of the Hitler government's policies as the issue), nearly 95.5 per cent.[3] Absent voting, not originally provided for, was later given a place in the system. Armed with a *Stimmschein*, or electoral certificate, an elector could, after that, vote anywhere he happened to be, so long as not outside of the country.

[1] Art 22.

[2] Supplementary regulations were embodied in a great *Reichswahlgesetz*, or electoral law, of April 27, 1920, issued in a new edition on March 6, 1924. Texts in *Reichsgesetzblatt*, I, No. 20, pp. 173 ff., and F. Marschall von Bieberstein, *Verfassungsrechtliche Reichsgesetze und wichtige Verordnungen*, 215–297.

[3] For fuller information on this matter, see H. F. Gosnell, *Why Europe Votes*, Chap. iii, and R. H. Wells, "Non-Voting in Germany," *Historical Outlook*, Oct., 1928.

2. PROPORTIONAL REPRESENTATION.

A. SINGLE-MEMBER DISTRICTS AND MAJORITY ELECTIONS UNDER THE EMPIRE

Beyond prescribing the suffrage arrangements indicated above, fixing the term of Reichstag members at four years, and requiring that elections be held on Sundays or public holidays, the constitution left the regulation of the electoral system entirely to later legislation, save in one very important particular: the elections were to be conducted "according to the principles of proportional representation." In imperial days, Reichstag members—397 in number—were chosen in single-member districts by majority vote. If no candidate in a district received a majority on the first ballot, the electors went to the polls two weeks later and made their choice between the two who stood highest. Districts, with some 100,000 people each, were originally approximately equal. As time passed, however, they grew highly unequal; for heavy shifts of population, especially from rural sections to towns, were compensated for by no reapportionments whatsoever. Chief sufferers were the Social Democrats, whose desire it had long been to see single-member-district, majority election replaced by a system of proportional representation. And here again, with the assistance of other interested elements, they triumphed at Weimar by procuring adoption of the proportional plan, not only for Reichstag elections, but for *Land* and local elections as well.

B. A PROPORTIONAL PLAN ADOPTED

As pointed out in an earlier chapter, proportional representation, far from being a novelty, was a familiar electoral device in Europe even before Germany and a long list of lesser states[1] installed it at the close of the World War. It was, indeed, not unknown to Germany herself. Hamburg had used it since 1906 in electing all but eight members of its lower house; Wurttemberg since the same year in electing not only some members of its lower house but also certain municipal councillors; Bavaria from 1908 and Baden from 1910 for electing municipal councillors generally. The Weimar Assembly was itself chosen by this method. Several different ways of applying the proportional principle had been developed, both in Germany and elsewhere, and when, late in 1919, the framing of a new national electoral law was taken up at Weimar, it became necessary to decide which was best adapted to the conditions and needs of the time. For electing the Assembly, the so-called D'Hondt plan had been borrowed from Belgian usage. In a number of respects, it, however,

[1] *E.g.*, Austria, Estonia, Latvia, Lithuania, Poland, Czechoslovakia, and Yugoslavia.

in case a member of the Reichstag died, resigned, or was expelled, the vacancy should be filled, not by means of a special election, but by the leaders of the party concerned, who were to select for the seat some person who was on the party list at the last election but failed to be chosen. Much is made by some writers, also, of the alleged utility of the national list, on the ground that it opened up a way by which able men who for personal—perchance financial—reasons would shrink from seeking election in the districts, or perhaps would have small chances of success at the polls, could nevertheless be brought into public life. There is something to the point; on one occasion, Stresemann himself obtained a seat only in this way. What more commonly happened, however, was that the principal party leaders placed their own names on the national list, with a view to assuring themselves safe berths and at the same time securing freedom to devote themselves during the campaign to the larger concerns of party generalship.[1]

E. DISADVANTAGES

Notwithstanding its attractiveness from many points of view, the system was, however, open to criticism on several grounds, indeed, a decade of trial left it exposed to vigorous attack, not only from dissatisfied political groups, but from impartial students of electoral problems as well.[2] To start with minor, and more easily remediable, faults: first, the flexible plan

[1] The aggregate number of seats filled at each election from the several national lists was larger than might be supposed. In 1928, 75 of the 491 members elected were chosen in this way, and in 1930, 91 out of 577. The lists of the larger parties would probably have yielded most heavily in any case, but it is worth observing that the law, as early amended, contained a provision which put small parties at special disadvantage in the matter, *i e*, that no party might obtain on the basis of its national list more seats than it had already won in the various districts and unions. The curious results that sometimes arose from this restriction are well illustrated by the experience of two minor parties in 1928. With a total of 481,254 votes, the *Deutsche Bauernpartei* secured eight seats, five in the districts and three from the national list. With a total of 483,191 votes, so scattered throughout the country that its highest poll in a single district was only 42,099, the *Volksrechtspartei* managed to secure one seat by combining votes in a union, and was thus limited to one additional seat from the national list—a total of two, as against eight, although the popular vote was larger. The actual basis on which seats were won by the principal parties in the 1928 election appears from the following table

Party	Total	District Seats	Union Seats	National List Seats
National People's	73	57	6	10
National Socialist	12	2	4	6
People's	45	28	8	9
Centrist	62	46	10	6
Democrat	25	7	9	9
Social Democrat	153	135	8	10
Communist	54	35	13	6

[2] See, for example, H. Kraus, *The Crisis of German Democracy*, 137–154

of allotting seats caused the Reichstag to become too large for the most effective performance of its work. The number of seats under the Empire was 397. Under the Republic, it started at 459 after the initial election of 1920, rose to 472 and 493, respectively, after the two 1924 elections; reached 577 after the election of 1930, 607 after that of July and 575 after that of November, 1932; and touched new levels in 1933, when the figures after the March and November elections were, respectively, 648 and 661. The obvious remedy, *i.e.*, to increase the electoral quota from 60,000 to a higher figure, was often proposed, but without result. A second shortcoming arose from the circumstance not only that (as already mentioned) the device of the national list failed to bring into the Reichstag non-politicians of conspicuous ability, but that it led to the election and seating of large numbers of candidates (upwards of a fifth of the entire membership on one or two occasions) who had been before the voters only in the qualified sense that when the latter went to the polls they knew that if they supported a given party, such seats as might accrue to it from its national pool would be assigned by the leaders from the party's published national list. In the third place, notwithstanding provisions of the law designed to discourage the growth of *Splitterparteien*, or "splinter" parties,[1] the proportional system unquestionably contributed to "balkanizing" the political structure by leading the people to divide into considerably larger numbers of parties than existed under the Empire, or even at the beginning of the Republic. "In the elections to the Weimar Assembly, 10 party lists secured representation and 19 did not; in the Reichstag elections of May, 1928, 15 parties secured representation and 23 did not; and in the Reichstag elections of September, 1930, 16 parties secured seats and 21 did not. In a decade, therefore, the parties represented in the German legislature increased by more than 50 per cent and the number offering lists in the elections increased by more than 27 per cent."[2] It would be fallacious to attribute this unfortunate development exclusively to proportional representation. The same thing happened, however, in other Central European countries which adopted the proportional plan, and the association of over-multiplied parties with the plan is much too frequent to be accidental. As the matter worked out in Germany, the formation of cabinets grew almost impossible, and constitutional deadlock—the ideal preparation for dictatorship—became chronic.

[1] *E g*, the rule, mentioned above, precluding a party from being allotted any seats at all unless it was strong enough to elect one or more candidates in the districts or unions.

[2] A. J. Zurcher, *The Experiment with Democracy in Central Europe*, 85–86.

VOTING FOR PARTIES AND NOT FOR MEN

Still further, and equally serious, difficulty lay in the impersonal character of the elections and the almost mechanical rôle assigned the voter. To begin with, in the matter of selecting candidates, the law started off by requiring that a party list in a district should be put forward by not fewer than 500 electors, but ended weakly by allowing it to be entered by as few as 20 signers, provided "credible" evidence was furnished that as many as 500 electors were prepared to support it. The 20 signers were almost invariably party leaders, who alone decided who the candidates were to be and in what order their names should appear on the ballots. In the next place, the electoral campaign was directed entirely to persuading the voters to support the party; the candidates, as individuals, were nowhere featured. Still further, when the voter went to the polls, the ballot which he received carried, to be sure, all of the party names, duly numbered and in the order of the number of seats held by the respective parties in the last Reichstag, but, under each party name, not the full list of candidates, but only the names of the first four.[1] Finally, the elector must accept the list as it stood and vote a "straight ticket," voting indeed, not for individuals at all, but only for the "bound" list, or, to all intents and purposes, for the party. If he struck out a name or tried to indicate a different order of preference, his ballot was regarded as defective. To be sure, the voters in European countries generally —even in Great Britain—have relatively little to do with the selection of candidates; party managers, great or small, commonly attend to that. Even in the United States, complaint on similar lines is often heard. There is hardly another country, however (apart from fascist régimes) in which party control frustrates electoral freedom on the part of the ordinary voter to such a degree as in republican Germany. Certainly there is none (with the same qualification) in which the voter has so little opportunity to make choices among individual candidates presented. It was at this point that the severest criticism of the system arose, both from Germans and from foreign observers; and to break the power of the machine and at the same time reestablish some vital personal connection between candidate and voter, many thoughtful Germans were prepared to do away with the proportional system altogether and restore the single-member-district plan. Without going this far, something might have been gained by reducing the size of the districts and by applying the principle of the single transferable vote on lines favored by advocates

[1] For a specimen ballot, see J. K. Pollock, *German Election Administration* (New York, 1934), 37.

of proportional representation in Great Britain.[1] Most of those having to do with party management, however, stoutly opposed any such change, even though, as a German leader conceded, "not parties, but men, is what the people want to see: men with whom they may argue and in whom they may believe." [2]

A DIVIDED AND NOT VERY STRONG REICHSTAG

In a decade during which the gravity of national problems called loudly for the fullest coordination of effort, the Reichstag was divided sharply on party lines, and on the whole not very effective. Viewed as individuals, the membership was respectable but not distinguished. Lawyers were few (in 1928, no more than 20 members were listed as such)—fewer even than in the British House of Commons, and far fewer than in the French Chamber of Deputies and in American legislatures. On the other hand, members who were at the same time officials or employees of *Land* or other governments were numerous, in 1928, there were no fewer than 94 such. Numerous, too, were representatives of agriculture and of trade, industry, and commerce—64 and 68, respectively, in 1928. Authors and journalists were almost as plentiful—61 at the date mentioned. Of workers, there were at the same time 40; of trade-union officials, 66. The dominance and discipline of party, so manifest at election time, habitually carried over intact into the chamber; and though the constitution stipulated plainly that the members should be "subject only to their own consciences" and "not bound by instructions," [3] there is hardly another legislative body in Western Europe in which voting is so uniformly on lines predetermined by party decision. The closest approach is perhaps the British House of Commons, with the French Chamber of Deputies at the opposite extreme. Any Reichstag member failing to vote on an important question with members of his group was liable to expulsion from the party. Rigidity of party voting may well have had something to do with the decline of parliamentary oratory at Westminster; at Berlin, it undoubtedly tended strongly to make debate "wooden and stereotyped, not spontaneous and interesting." [4]

[1] See p. 177 above

[2] R von Kuhlmann, *Thoughts on Germany* (London, 1932), 152–153. For a plan of electoral reform submitted to the Reichsrat by the Bruning government in 1930, see *Nat. Munic Rev*, Nov, 1931, pp. 669–670. The standard work on the electoral system under consideration is G. Kaisenberg, *Die Wahl zum Reichstag* (4th ed, Berlin, 1930), but American readers will find a thoroughly satisfactory account of it in the booklet by Pollock mentioned above. Cf. H Tingsten, *Political Behavior; Studies in Election Statistics* (London, 1937).

[3] Art 21.

[4] J. K. Pollock, *The Government of Greater Germany* (New York, 1938), 26.

THE REICHSTAG'S CONSTITUTIONAL POWERS AND LIMITATIONS

However far it may have fallen short, the Reichstag was designed to occupy a position of great power and prestige. To it, the chancellor and ministers were expressly made responsible, with all the implications of control that go along with such an arrangement. To it, further, was assigned the general function of making laws for the Reich. There nevertheless was no intention of permitting it to become an absolute arbiter of the nation's destiny. In point of fact, notwithstanding its high claim as a body directly representing a democratic electorate, it was hedged about with numerous important restrictions. In the first place, although members of the Reichstag might themselves introduce bills, there were other sources from which measures might come, and the initiative exercised by the Reichstag was in practice not very extensive. As in other parliamentary systems (particularly the British), the government formulated and introduced the bulk of important legislative proposals, and also found means of securing for them favored positions on the calendar. In order to appear on the calendar at all, private members' bills must be endorsed by as many as 15 deputies [1]—a rule which had the merit of preventing petty minorities from harassing the committees with a plethora of proposals doomed to defeat, yet also one which further illustrates the utter subordination of the individual deputy to the party or group. Bills might originate in still other ways. The Reichsrat might request the cabinet to introduce a measure in the Reichstag, and the request must be complied with, even though in presenting the measure the ministers might express their own disapproval of it. Under the provisions for popular initiative, bills might be originated by the people, and again must be submitted to the Reichstag. Finally, they might come from the National Economic Council, once again being transmitted by the cabinet. The upshot was that, as indicated above, the Reichstag did not itself originate any large proportion of the projects upon which its time and efforts were expended.

Other restrictions were no less important. One was the power of dissolution, which, contrary to the situation in France, was used vigorously. Another was the extensive ordinance power of the executive, together with the so-called dictatorial powers conferred in Article 48.[2] A third was the right of the Reichsrat to object to measures as passed by the Reichstag, with consequences to be noted below. A fourth was the check provided by the popular referendum.

[1] This was the minimum number which the rules recognized as constituting a parliamentary group

[2] See pp. 682–683 below.

A fifth, of at least potential importance, was judicial review. Under normal conditions, these checks and restrictions would not have been expected to rob the Reichstag of essential preeminence in the governmental system. Under the circumstances existing after 1929, however, they (or certain of them) were taken advantage of to reduce it to impotence, and indeed to threaten its very existence.

SESSIONS

No one acquainted with the Weimar constitution's propensity for full and detailed provisions would be surprised to find in the instrument numerous stipulations as to how the Reichstag should be organized and how it should carry on its work. As for sessions, the principal requirements were (1) that the body should meet every year on the first Wednesday in November, (2) that it should be convened at other times on request of the president of the Reich or of as many as one-third of the members, and (3) that any newly chosen Reichstag should meet within 30 days after its election. Proceedings were required to be public unless 50 members moved, and a two-thirds majority decided, to close the doors; the body was authorized to make its own rules of procedure, and the customary privileges and immunities of members were guaranteed. Corresponding to the speaker of Anglo-American legislative bodies was a president, elected by majority vote for the duration of a parliament, and endowed with larger powers not only as a moderator but as custodian of property and as representative of the Reich in various legal connections. Chosen as a party man, he retained his party character in the chair, participating in debate when he liked and issuing statements on party lines to the press. Until the rise of the National Socialists to power in 1933, the office was filled continuously by Dr. Paul Loebe, of the Social Democratic party; and indication of the political importance attached to it is furnished by the fact that one of the first acts of the Hitler dictatorship was to immure Dr. Loebe in a concentration camp for political prisoners.

COMMITTEES

The committee system bore a good deal of resemblance to that of the French Chamber of Deputies. Two standing committees were required by the constitution—one on foreign affairs and another charged with safeguarding the rights of the Reichstag in its relations with the cabinet during intervals between sessions and between a dissolution and the meeting of a new Reichstag.[1] Others were created as required, to a total of

[1] Art. 35 The committee on foreign affairs, likewise empowered to function between sessions and between parliaments, was intended by the constitution's makers to serve as a restraint upon "secret diplomacy."

15, each with a membership of 28.[1] Committee members were nominated by the parties in proportion to their strength, with, however, no representation for any group having fewer than 15 supporters, and as a rule the most numerous party was allowed to have the chairmanship of the committee which it considered most important, the second most numerous taking next choice, and so on, by rotation, until the smallest groups entitled to committee representation were reached, whereupon the process started over again. Each party fraction on a committee named an *Obmann*, or chief, who became primarily responsible for promoting the party's interests in connection with the committee's work. There were also special committees, particularly such as were set up, on demand of one-fifth of the Reichstag, to carry on inquiries and investigations. As in the United States, the bulk of actual legislative work was performed in committee.

HOW BILLS WERE HANDLED

In line with English parliamentary tradition, bills were subjected to three readings, with, however, the important difference that committee stage followed the first and purely formal reading, and not the second as at Westminster. This meant that all bills were sent to committee, as in the American Congress, and not merely those that survived second reading, as under British practice. In considering a bill, a committee had a free hand; it might report favorably or unfavorably, and with or without suggested amendments. The general public was excluded from sittings, but the initiators of a measure had a right to be present when it was being considered, and any Reichstag member who desired might attend at any time as a spectator. Ministers and department officials might be called before a committee to give information, and though under the rules other outsiders were excluded, representatives of interests likely to be affected oftentimes waited around outside the committee room to button-hole members when opportunity arose; and indeed the absence of formal hearings was in some degree offset by extra-legal "interviews" participated in by committeemen acting in their individual capacities along with experts and others who might be invited to take part. Conclusions having been reached, a report was drawn up and given general distribution, preparatory to debate on second reading. At this point, the curious feature arose that the

[1] The list in 1932 was as follows: (1) Maintenance of the Rights of the People's Representatives, (2) Foreign Affairs, (3) Rules of Procedure, (4) Petitions, (5) Budget, (6) Taxation Problems, (7) Commercial Policy, (8) Economic Affairs, (9) Social Affairs, (10) Population Policy, (11) Housing, (12) Education, (13) Justice, (14) Civil Service, and (15) Transportation

committee considered its work finished and, as such, took no part in the further consideration of the bill. Neither the committee chairman, as in the American Congress, nor a specially chosen reporter, as in the French Parliament, assumed responsibility for explaining the report and securing its adoption. What happened was rather that each fraction or quota of the committee carried the committee's decision to a caucus of his party in which, after such discussion as was desired, some person (committeeman or otherwise) was designated to speak for the party when the matter came up in the Reichstag. In accordance with positive instructions given them by the respective party caucuses, these spokesmen supported the report on the floor, opposed it, or urged substitutes or modifications, and as a rule few others, except ministers, took part in the debate. Here again, everything was on a party basis. Normally, the majority party quotas in the committee determined the nature of the report. Normally, also, when the vote on second reading was taken, the majority groups determined the outcome. Rarely, if ever, did a Reichstag decision flow from free, spontaneous discussion on the floor; and this was a serious defect in the legislative process.

Debate was expedited by a rule under which speeches were limited ordinarily to one hour. But it might be cut even shorter by closure, which normally took the form of an agreement, by majority vote, to terminate discussion by, or within, a stated time. The most usual method of voting was by rising. When, however, the result was doubtful, the members retired from the chamber, in the British fashion, and were counted as they returned through one or another of three doors marked, respectively, *Ja*, *Nein*, and *Enthalte Mich*.[1] On demand of 50 members, urns were passed around instead, each representative depositing a card bearing his name and one of the three terms indicated.

QUESTIONS AND INTERPELLATIONS

As in France, both ordinary, or "small," questions (*kleine Anfragen*) and interpellations were addressed to members of the cabinet. Once again the submergence of the individual in the group comes to light. For a "small" question—always in writing, and eliciting a reply which was not debatable—must be signed by at least 15 members, and an interpellation by at least 30. In the case of an interpellation, if and when the government indicated that it was willing to discuss the matter dealt with, the subject was placed on the agenda, and when the time arrived, one of the signers explained why the inquiry was made, a spokesman for the government replied, and unless 50

[1] *I e*, abstention

members demanded debate, the incident was closed. If, furthermore, two weeks passed with no attention to the matter from the government, the interpellation might be placed on the agenda notwithstanding. But (*and this is the significant thing*) no vote was taken in any case, whether or not there had been debate; and thus interpellation, while affording means of criticizing the government and perhaps putting it on the defensive, was no such weapon in the hands of an obstructionist minority as it proves in the French Chamber.[1]

THE REICHSRAT —NATURE AND STRUCTURE

Having decided that a second chamber was desirable, the makers of the Weimar constitution provided for a Reichsrat, or Reich Council, broadly resembling the old Bundesrat in structure, though poles apart from it in the matter of powers. As in the earlier body, each state, or *Land*, was assigned one vote, and more populous *Lander* additional ones, subject in the present instance to the restriction that no *Land* might have more than two-fifths of the total number. The original distribution of additional votes was on the basis of one for every 1,000,000 inhabitants, with another for any remaining fraction of 1,000,000 if equal to the population of the least populous *Land*;[2] and on this basis Prussia received 25 votes, Bavaria 7, and other *Länder* lesser numbers, to a total of 63. A redistribution was to be made by the Reichsrat in any case, following each general census. But as early as 1920 the merging of seven small *Lander* to form the new *Land* of Thuringia (with two votes) reduced the total of non-Prussian votes by five and brought down the Prussian quota to 22 in order to keep it within the two-fifths limit. In 1921, a constitutional amendment changed the quota entitling a state to an additional vote from 1,000,000 to 700,000 or major fraction thereof, and on this basis Prussia received 27, Bavaria 10, and so on down the list, to a total of 67. A further redistribution following the census of 1925 introduced minor changes, but without affecting either the total or the Prussian quota.[3]

As in the case of the old Bundesrat, each state was entitled to a fixed number of votes and might send any number of delegates within this limit. Furthermore, whereas formerly the delegates

[1] See pp. 528–530 above. On all matters relating to Reichstag organization and procedure, see the *Geschaftsordnung* of December 12, 1922, as reissued in a revised edition of March 31, 1931. *Reichsgesetzblatt*, 1931, No. 9, pp 221 ff, and H. Triepel, *op. cit.*, 176–190.

[2] Art. 61.

[3] Prussia, 27, Bavaria, 11; Saxony, 7; Wurttemberg, 4; Baden, 3; Hamburg, Hesse, and Thuringia, 2 each; and the remaining nine *Lander*, 1 each.

were drawn from officials of the state governments as a matter of usage, the Weimar constitution required that they be such officials in all instances except in Prussia, where one-half were named, not by the government of the *Land*, but by the several provincial administrations. This latter arrangement was designed to decentralize and lessen the power of Prussia in the Reichsrat, an end promoted also by the absence of any provision such as that of imperial days under which Prussia was able single-handedly to defeat any constitutional amendment in the Bundesrat. The Weimar constitution left the way open also for decentralization in voting; for whereas before 1918 all of a state's votes in the Bundesrat were required to be cast in an indivisible block, the new constitution contained no provision of the sort. Practically, however, the matter did not work out so differently, because state governments naturally enough fell into the habit of instructing their representatives as to how they should vote—except only that in the case of Prussia the government at Berlin could, of course, control the votes of only the delegates whom it appointed. Prussia actually had a larger proportion of the votes than in the old Bundesrat, *i.e.*, some 40 per cent as compared with 28. For the reasons given, however, her government was less dominant than before.

THE REICHSRAT—FUNCTIONS AND POWERS:

It has been made clear that the Reichsrat was intended to be only a pale image of the supremely powerful Bundesrat. At best, the functions assigned it were mostly of a negative sort. Briefly, they fell into three main phases according as they had to do with amending the constitution, with legislation, and with issuing ordinances. As explained in an earlier chapter, a constitutional amendment might be adopted by a two-thirds vote in both Reichstag and Reichsrat; but if the latter refused assent and within two weeks demanded that the proposal be submitted to the people, the amendment finally prevailed only if the ensuing referendum resulted favorably.[1] The Reichsrat therefore had a suspensive veto, but nothing more.

1. AMENDING THE CONSTITUTION

2. LEGISLATION

In the domain of ordinary legislation, three features are significant. (1) The cabinet was required to submit all of its legislative projects first of all to the Reichsrat; and although it might carry them on to the Reichstag whether the Reichsrat had endorsed them or not, it must, in case of dissent, give the popular body the benefit of the other chamber's views. (2) The Reichsrat might itself initiate measures, which the

[1] See p. 637 above

cabinet, even though disapproving of them, must present to the Reichstag, along with its own opinions. (3) The Reichsrat might raise objection, within two weeks, to a bill passed by the Reichstag; whereupon the measure must go back to the popular chamber for reconsideration. If the latter chose to stand its ground, and by a two-thirds majority, there was nothing further that the Reichsrat could do; the president of the Republic must either proclaim the measure as law or submit it to a popular vote. If, however, the Reichstag adhered to its earlier decision by something less than a two-thirds majority, the measure was submitted to the people within three months if the president of the Republic so chose, or, in default of such action, simply perished. Without having power to frustrate any legislation whatsoever upon which the Reichstag was sufficiently determined, the Reichsrat could nevertheless impose checks and delays, compel reconsideration, and create situations calculated to bring into play direct action by the electorate. The power was exercised on a number of occasions (nine times between 1920 and 1928), although in the matter of initiating legislation the Reichsrat seldom went beyond requesting the cabinet to prepare and introduce a bill on a subject in which it was interested.[1]

3. ISSUING ORDINANCES

A third phase of Reichsrat activity had to do with the executive and administrative work of the government. The ministers were, of course, not responsible to the Reichsrat in a political sense, but this did not prevent them from being questioned and interpellated in that chamber. Various kinds of ordinances could be issued only with the Reichsrat's consent, and the body itself had power to issue ordinances on certain aspects of taxation and finance in so far as they affected the mutual interests of the Reich and the *Lander*. Being, indeed, essentially a council of states, it is not strange that the Reichsrat should have acquired, whether by constitutional provision, by statute, or merely by usage, considerable consultative authority in all that pertained to Reich-*Lander* relations, including the exercise of so-called dictatorial authority under Article 48. Without express legal authority for doing so, the body indeed more than once successfully demanded that objectionable executive ordinances be rescinded. One should not, indeed, be misled by the Reichsrat's secondary rôle into underestimating the true importance of the chamber. In session practically all of the time, composed of experienced ministers and other state officials, equipped with 11 active

[1] For a summary of the principal instances in which the Reichsrat utilized the powers described, see M. Aubry, "Le Reichsrat dans la constitution allemande," [illegible] Jan.–Mar., 1932.

standing committees with which chancellor and ministers freely consulted,[1] and often made by these officials the vantage point from which to announce major domestic and international policies, the body was—so long as it lasted—perhaps the most vigorous and successful of all of the newer second chambers of post-war Europe. On the few occasions, for example, when a measure, objected to by the Reichsrat, was sent back to the Reichstag, the second chamber was usually sustained.[2] The principal handicap from which it suffered was the instability inevitably resulting from rapidly shifting coalition governments in the *Lander*.[3]

DIRECT LEGISLATION

1. WHY PROVIDED FOR

To universal suffrage, proportional representation, responsible ministers, and other presumed guarantees of democratic government, the architects of several of Europe's post-war constitutions added the popular initiative and referendum. The classic land of these twin devices of direct democracy is Switzerland, where the referendum in its present form originated in the canton of St. Gall as early as 1830 and the initiative in that of Vaud 15 years later. Outside of Switzerland, the United States saw the two principles adopted most extensively up to the time of the World War, the first states to authorize the use of them as instruments for the making of ordinary laws being North Dakota in 1898 and Utah in 1900. In the great era of post-war constitution-making, the Slavic states, swayed largely by French viewpoints and traditions, showed little interest in the matter of direct legislation; Czechoslovakia alone made some provision for popular referenda. The Germanic states, however, almost unanimously adopted provisions on the subject—not only the German Reich (which became the largest political unit ever to attempt anything of the kind), but all of the *Lander* within the Reich, Austria and some of its *Lander*, and the Free City of Danzig.

To be sure, the proposal to empower some minimum quota of the voters to bring forward a legislative proposal, with a right to have it submitted to the electorate for acceptance or rejection, stirred sharp differences of opinion in the Weimar Assembly. The Preuss plan

[1] At least nine *Lander* were represented on each committee, with Prussia, Bavaria, Saxony, and Wurttemberg represented on all

[2] O. Koellreutter, in *Encyc of the Soc. Sci*, IX, 382.

[3] The development of the Reichsrat in comparison with other Central European second chambers is treated clearly in A. J. Zurcher, *The Experiment with Democracy in Central Europe*, Chap IX In actual practice, the Reichsrat was considerably more powerful than was originally intended, and it grew steadily in importance as time went on

made no mention of it, and over the opposition of the more conservative elements generally it was finally given a place in the constitution with the full and unqualified support of only the Social Democrats. A main objection was that under a representative system of government such as was envisaged, it was not desirable to raise up a law-making authority that might become a rival of Parliament. The referendum met with far wider favor, being viewed, not as a competitive legislative instrumentality, but rather as a means of promoting true representative government and perfecting its techniques, and virtually all political elements represented in the Assembly united in writing it into the fundamental law. When cabinet and Parliament could not agree, it would be an advantage, so it was argued, to have machinery by which the matter at issue could be sent to the people for settlement, resignations of cabinets would be averted, likewise parliamentary dissolutions, and greater stability of government attained. In the same way, deadlocks between the legislative chambers would be resolved, to the advantage of all concerned. To the more democratic elements the device appealed further as a means of educating the people politically through frequent participation in the work of government, and also of meeting part way those who had doubts about the desirability of a purely representative system.

2. CONSTITUTIONAL STIPULATIONS

In practical use, both initiative and referendum everywhere lend themselves to many variations, qualifications, and complications. The arrangements set up for the Reich under terms of the Weimar constitution can, however, be indicated briefly. As for the initiative, the salient fact is that one-tenth of the qualified voters of the country might by petition bring forward, in fully drafted form, either a constitutional amendment or an ordinary bill, which, upon being laid before Parliament by the cabinet, became law if adopted in the regular manner in the form submitted, but otherwise must be referred to the electorate for final decision.[1] As for the referendum, there were six more or less differing circumstances under which it might be brought into play. (1) At any time within a month after a bill had been passed by the Reichstag, the president of the Republic might, before promulgating it as law, order a referendum on it. (2) If a bill passed the Reichstag, but one-third of the members demanded postponement of promulgation for two months, and if the chambers did not declare the measure urgent, it must be submitted to a referendum if one-twentieth of the voters so requested. (3) A bill upon which the chambers could not agree was referred within three months if the

[1] Art. 73.

president so decided. (4) As indicated above, a popularly initiated bill must be referred if the chambers failed to pass it in the form in which it was presented to them. (5) If the Reichstag adopted an amendment to the constitution and the Reichsrat did not concur, the latter might at any time within two weeks demand and obtain a referendum. (6) If the Reichstag by two-thirds majority suspended the president of the Republic from office, the question of removal was to be decided by the people. In no case might a referendum annul an enactment of the Reichstag unless a majority of the qualified electors voted on the proposition; and measures relating to the budget, taxation, and salaries could under no circumstances be referred save by decision of the national executive.[1]

3. ACTUAL WORKINGS

Despite rather general expectation to the contrary, two deductions that might have been drawn from the experience of Switzerland have held generally true of the initiative and referendum in all of the Central European states that adopted the devices after the war. The first is that they would be used sparingly, the second, that in so far as used at all, they would yield conservative rather than radical results. In the German Republic of 1919–33, only seven measures in all were started by popular initiative; only two of these reached a popular vote (one in 1926 confiscating the property of princes who ruled in Germany before 1918, and another in 1929 rejecting the Young Plan); and both were defeated. In the *Lander*, the record was even less impressive. Among weighty obstacles encountered (in the national sphere) were the difficulty of obtaining the signatures of so large a proportion of the voters as one-tenth; the fact that the cost of securing such support must be borne by the petitioners; the ease with which, even when a petitioned measure was brought to a popular vote, the elements opposed to it could defeat it by instructing or persuading their supporters to stay away from the polls, thereby cutting the total vote to less than the necessary half of the entire electorate; and finally the probability that any popularly initiated measure would be opposed by the cabinet and chambers—the initiative being to all intents and purposes a means of seeking action on lines which the government had itself refused to follow. The referendum fared but little better. Of the six modes by which referenda might arise, as enumerated above, four were not

[1] For these various provisions, see Arts 43, 73, 76 Of the 17 *Lander*, all provided in their permanent constitutions for some form of referendum, and all except Lubeck for some form of initiative See L. S Greene, "Direct Legislation in the German *Lander*," *Amer. Polit. Sci. Rev.*, June, 1933, and R H Wells, "The Initiative, Referendum, and Recall in German Cities," *Nat. Munic. Rev.*, Jan., 1929.

employed at all, and the others in but few instances and with no very striking results. Speaking broadly, experience was the same in the *Lander*. Whatever the reasons, direct legislation totally failed to attain the importance expected of it when the constitutions were made. One restraining factor undoubtedly was proportional representation. With all shades of political opinion reflected in the legislative body, almost any issue could be brought to a head and decided there, leaving the groups small incentive to appeal directly to the people except through the ordinary electoral processes.[1]

[1] On direct legislation in Central Europe generally, see A. Zurcher, *The Experiment with Democracy in Central Europe*, Chap. vi, and A Headlam-Morley, *The New Democratic Constitutions of Europe*, Chap viii German systems and experiences are dealt with in H Finer, *op cit.*, II, 935–941, J Mattern, *op cit*, 551–561, R. Thoma, "The Referendum in Germany," *Jour of Compar. Legis and Internat Law*, Feb., 1928, H. F Gosnell, "The German Referendum on the Princes' Property," *Amer Polit. Sci Rev*, Feb., 1927 An excellent German work is C Schmitt, *Volksentscheid und Volksbegehren* (Berlin, 1927).

CHAPTER XXXIV

President—Ministers—Cabinet

THE constitution-makers of Weimar found no difficulty in agreeing upon a parliamentary system of government, but they were for a time considerably puzzled about the form to be given the executive. There were those among them—chiefly the Independent Socialists—who opposed having any titular chief executive at all. A president or other such official, they contended, either would stay within the limits marked out for him, in which case he would be ornamental, costly, and useless, or would exceed his legal powers, in which event he would be dangerous as well. Let the executive function, they urged, be vested directly in a number of ministers selected by Parliament, on the model, for example, of the Swiss Federal Council. Interestingly enough, similar proposals won their way in Prussia, Bavaria, Baden, and others of the *Lander*, where, under the new frames of government, a titular executive was dispensed with and executive power bestowed upon a minister-president (with colleagues), chosen by the parliamentary body. For purposes of the Reich, however, the plan did not commend itself. Rather, a majority of the delegates listened with approval as Dr. Preuss and his supporters argued not only for a titular executive, but for an executive with a large amount of power. A strong and democratic national legislature, it was conceded, was an excellent thing, but it should be counter-weighted with an executive standing on an equal basis of popular support and able upon occasion to impose a check upon the legislature's activities A strong executive would be in line with German tradition, and would have the added practical advantage of serving as a symbol of unity among a people discouraged by defeat and divided by racial, religious, and political cleavages, and also of giving the nation a show of dignity and force in the eyes of a hostile world. The problem as stated by Preuss and envisaged by the Assembly itself was to create an executive authority sufficiently powerful to act as a counterpoise to

THE PROBLEM OF A NATIONAL EXECUTIVE

Parliament, and indeed to control it in the name of the people, yet not strong enough to dominate it arbitrarily and undermine the new régime of democracy.

A SOLUTION ON UNIQUE LINES

The solution was not easy to find. The Reichstag of imperial days offered an obvious basis upon which to build the new and broader representative system, but the institutions of the Empire furnished little that could be turned to account in constructing the desired style of executive. For obvious reasons, neither Prussian kingship nor Hohenzollern emperorship could be taken as a pattern. The old chancellorship, incompatible with every principle of parliamentary government, was almost equally useless. Nor did Dr. Preuss and his co-laborers find precisely what they desired in any foreign country. They did not want a government so much divided, on the principle of separation of powers, as that of the United States. They did not want what Dr. Preuss termed the "impure parliamentarism" of France. They did not want the plural executive of Switzerland. In the end, therefore, they did the inevitable thing; that is to say, they hammered into shape an executive establishment—built around a strong president and a group of responsible ministers—into which went French, English, and of course German contributions, without precisely reproducing the arrangements to be found in any individual country. If the German national executive (particularly the unique form of presidency and premiership) in the Weimar set-up was a hybrid institution, it is only fair to recognize that it was meant to be such.

HOW SHOULD THE PRESIDENT BE CHOSEN?

Having decided that there should be a president, those planning the new constitution were confronted with the question of how he should be selected. Bent upon keeping parliament ultimately supreme, Poland, Latvia, Lithuania, Austria, Czechoslovakia, and other states which adopted new republican constitutions after the War provided for the election of their chief executive after the French manner, *i.e.*, by the members of the two houses convoked in national assembly. This method would not, however, have been compatible with the type of presidency planned for Germany; and although such men as Dr. Preuss fully recognized the danger that a chief executive chosen directly by the electorate, and drawing his authority from it equally with the legislature, might not fit perfectly into a parliamentary system, they preferred to run the risk of such ill adjustment rather than see the president fall into a relatively weak position occupied by the president of France. Accordingly,

the constitution provided for direct election by "the whole German people." [1]

As to the manner in which popular election should be carried out, the constitution was silent, save to provide that details should be "regulated by a Reich law." This was not because the Assembly failed to appreciate the importance of the matter, but, on the contrary, because so much concern was felt about it that no agreement could be arrived at. The main point at issue was that of including provisions ensuring election by majority. One proposed plan was that if a first ballot failed to produce a majority for any candidate, the people should ballot again, at a "run-off" election, upon the two who had stood highest. To this it was objected that, on account of the multiplicity of parties, there would as a rule be many candidates, and that the popular vote would be so divided that even the highest two might easily have behind them only a minority of the electorate. A second plan ran on similar lines, with the difference that at the second balloting all candidates who chose should be permitted to remain in the race, new ones might enter, and the competitor emerging with the largest number of votes should be declared elected, regardless of majorities. A third plan, introducing the principle of alternative voting, provided that the electors should in any case be called to the polls only once, but on that occasion should indicate their second as well as their first choices, in order that ballots might be transferred accordingly when first choices failed to yield a majority. A fourth scheme would have brushed the whole problem aside by providing simply for election by plurality on the first ballot.

THE METHOD ADOPTED

Decision among these various proposals was arrived at in a national law of May 4, 1920, legalizing the "run-off" plan, *i.e.*, the first of the four enumerated above. Before this method could actually be tested, however, dissatisfaction with it (chiefly on the lines already indicated) led, in March, 1925, to substitution of the second scheme, as being, after all, a reasonable compromise between rigid insistence upon majority election and total disregard of the matter; and the two presidential elections actually held (exclusive of the original choice of Ebert by the Weimar Assembly) were carried out in accordance with the revised law.[2]

[1] Art 41. It is interesting to note that Millerand considered direct popular election an indispensable means of strengthening the French presidency See p. 454 above

[2] The text of the law is printed in F Marschall von Bieberstein, *op cit*, 405–407. The standard work is G Kaisenberg, *Die Wahl des Reichspraesidenten* (Berlin, 1925).

ELECTIONS OF 1925 AND 1932

Those responsible for the change were hopeful that after a preliminary test of strength at the first balloting, parties would so concentrate their support upon fewer candidates as to make possible majority election in the end. In the first of the two elections, this hope narrowly failed of realization; in the second, it was fulfilled, although again by a narrow margin. In the 1925 election, following the death of Ebert, seven candidates were voted on (by 69 per cent of the electorate) at the first balloting, and no one received a majority;[1] Jarres, nominee of the Nationalist and People's parties, polled almost 3,000,000 more votes than his nearest competitor, the Social Democrat Braun, yet only 39 per cent of the total. Then the lines of battle were redrawn. Parties of the moderate Left—Center, Progressives, and Social Democrats—joined in support of the Center candidate, Dr. Marx, all of the other candidates except Thalmann, the Communist, withdrew; and the parties of the Right, alarmed by the new alliance of the Left, urged and finally persuaded a new candidate to enter the lists in the person of no less a figure than Field Marshal Paul von Hindenburg. Resolving itself virtually into a contest between Marx supported by the Left and von Hindenburg supported by the Right, the second balloting (by 78 per cent of the electors this time) gave the latter a slight advantage, and the 77-year-old soldier became president. It was, however, a plurality election, since the votes polled by Marx and Thälmann exceeded those for the victor by more than a million.[2]

The next election took place at the expiration of von Hindenburg's first term in 1932, and stirred unusual interest the world over because of Adolf Hitler's bold bid for power. Five candidates entered the contest: von Hindenburg, Hitler (National Socialist),[3] Thälmann (Communist), Duesterberg (Nationalist), and Winter (Independent). Two important groups that had supported von Hindenburg in 1925 were now against him, but on the other hand the Social Democrats—through a peculiarly ironical turn of the political wheel—were for him; and after a spirited campaign which brought 86 per cent of the electors to the polls, he received almost, but not quite, a majority (49.6 per cent) of the votes cast. Duester-

[1] Under the law, candidates could be placed in nomination by petitions signed by at least 20,000 voters or presented by party groups

[2] The figures were von Hindenburg, 14,655,766, Marx, 13,751,615, Thalmann, 1,931,151.

[3] On the manner in which Hitler, Austrian by birth, acquired German citizenship in advance of this election, thereby becoming eligible for the presidency, see H. Kraus, *The Crisis of German Democracy*, 159–160.

berg and Winter withdrew; no new candidates entered; and after a new and vigorous stage of the campaign, the voters (at all events 83.5 per cent of them) marched again to the polls to settle the issue of von Hindenburg *vs.* Hitlerism on the one hand and Communism on the other. This time, notwithstanding that Hitler increased his vote by more than two millions, the president was reelected by a clear majority, *i.e.*, 53 per cent of the total, and for the time being the aspirations of the leader of the Brown Shirts were thwarted.[1] Again, as in 1925, it was demonstrated that parties, leaders, and electors alike looked upon the first poll as merely a preliminary test of strength, expecting that after this stage had been passed bargains would be entered into, party coalitions formed, and the contest narrowed down to its more genuine lines.

PRESIDENTIAL TENURE:

1. TERM

With a view to forestalling anything in the nature of a life presidency, the Social Democratic contingent at Weimar urged a presidential term of five years, with possibility of reelection not more than once. Believing it, however, for the good of the country that, as an offset to party turbulence, the office should have stability and a certain amount of permanence, Dr. Preuss advocated a term of seven years, with indefinite reeligibility, on the French model; and in the end this plan prevailed. Furthermore, in order to discourage the rise of such extra-legal limitations as are imposed by the no-second-term tradition in France and the no-third-term tradition in the United States, indefinite reeligibility was written expressly into the constitution.

Americans will be interested to know that there was some thought at Weimar of providing for a vice-president. The Preuss commission, however, threw its influence against creating a "republican crown prince," and provisions for presidential disabilities and vacancies were finally agreed upon as follows: (1) the chancellor should take the president's place during a brief interval of illness or other incapacitation; (2) if a president were to lose his reason, be involved in impeachment proceedings, or otherwise become unable to exercise his functions over a considerable period of time, the situation should be dealt with by a national law; and (3) in case of resignation, impeachment, or death, another president should forthwith be chosen by the people for a full seven-year term. A constitutional amend-

[1] The final vote was von Hindenburg, 19,359,983, Hitler, 13,418,547, Thalmann, 3,706,759. For complete tabulations of the votes in both the 1925 and 1932 elections, see A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933), 118. Cf. H. L. Childs, "The German Presidential Election of 1932," *Amer. Polit. Sci. Rev.*, June, 1932.

ment of December 17, 1932, modified these arrangements, however, by stipulating that the official who should step into the president's place in the event of disability or "a premature vacancy" should be, not the chancellor, but the president of the *Reichsgericht*, or Supreme Court.

2. SUSPENSION AND REMOVAL

The presidency, as has already appeared, was intended to be strong. At the same time, it was not to be autocratic, and provision was significantly made for removal, not only by process of impeachment (the charges to be brought, on grounds of violation of the constitution or the laws, by the Reichstag, and the judgment to be rendered by a newly created tribunal, the *Staatsgerichtshof*, or High Court), but also by vote of the people—in other words, by popular recall. This latter procedure must be instituted by a two-thirds vote of the Reichstag suspending the president from office and putting to the electorate the question of whether he should be definitely ousted or permitted to resume his functions. A bare majority of the popular votes cast was sufficient to work the president's downfall. If, however, the proposal failed, the accused was so far vindicated as to be regarded as having been reelected for a full seven-year term; and the Reichstag, rebuffed, was to be dissolved automatically and another chosen in its place. The general principle that the titular head of the state in countries having cabinet systems is politically irresponsible, since all of his orders and decrees must be countersigned by a responsible minister, here found interesting exception. The orders and decrees of the German president must be countersigned as in other countries. But the unusual powers assigned him, together with the fact that he was elected coordinately with the Reichstag by direct popular vote, seemed to the framers of the constitution—as they seemed to many German jurists afterwards—to place him in a position such that it was logical and necessary to give the people opportunity as a court of last resort to decide between him and the Reichstag at times of fundamental conflict. No actual use of the procedure having been made, it can, of course, be interpreted only on theoretical lines.

PRESIDENTIAL POWERS AND FUNCTIONS:

Turning to the president's powers and functions, we encounter a difficult subject indeed. If he had been only the usual sort of titular head of a cabinet-governed state, it would suffice simply to note the powers conferred upon him in the constitution, to point out that nearly all of these were in fact exercised in his name by a ministry responsible to the Reichstag, and to emphasize that his own

share in the government depended in large degree upon the extent to which he showed aptitude for advising with and influencing those who spoke and acted for him. Even before the stormy period 1930–32, however, in which von Hindenburg lent himself to many practices of dictatorship, the German president was not the usual sort of titular executive. Fitted, to be sure, into a cabinet system of government, and endowed with powers which in the main he was not intended to exercise as personal prerogatives, he was nevertheless designed to be, in the words of Dr. Preuss, "a definite center, an immovable pole," in the constitution, and the position which he occupied would be hard to characterize, not only because the times in which the Weimar system operated were abnormal and the only popularly elected president not a typical political figure, but because the office, created by grafting a strong executive on to a parliamentary system, was a unique device which, even by 1933, had not as yet revealed its full possibilities.

1. EXECUTIVE

As head of the state, however, the president appointed and dismissed the chancellor, and on the latter's recommendation, the ministers; directly or indirectly appointed and dismissed also all other national officers, civil and military, "unless otherwise provided by law";[1] served as commander-in-chief of the military and naval forces, both in war and in peace, called and presided over cabinet meetings; wielded the power of pardon, although not that of amnesty; and in the realm of foreign relations, received and accredited ambassadors and ministers, and concluded "alliances and other treaties" (subject to the restriction that such international agreements, if within the legislative competence of the Reichstag, required the consent of that body), although war could be declared and peace made only by "Reich law."[2]

2. LEGISLATIVE

In the domain of legislation, the president's powers, although circumscribed by many a constitutional provision, were nevertheless unusually extensive. A regular annual session of the Reichstag was provided for, but the president might cause special sessions to be convoked, and also might decree dissolutions. Having assured himself that they had been passed in due form, he promulgated all national laws by causing them to be published in the *Reichsgesetzblatt*, or National Law Gazette, with the qualification (1) that he might order a measure to be submitted to a popular referendum before promulgating it, (2) that he

[1] Art. 46. Partly by statute, partly by decree, the appointment of most minor officials was delegated to ministers and other authorities.

[2] Art. 45.

must cause a measure to be so submitted if, promulgation having been postponed for two months on demand of one-third of the Reichstag, one-twentieth of the qualified voters in the Reich petitioned for a popular vote upon it; and (3) that he might, within three months, so submit a measure upon which the Reichstag and Reichsrat could not agree.[1] In the case of a constitutional amendment, it was mandatory to order a popular vote—even though the Reichstag had given the proposal a two-thirds majority—if within two weeks the Reichsrat so demanded.[2] From these various provisions the president manifestly derived no veto power of any absolute sort,[3] although plenty of power of delay and suspension. Their object, it has been remarked, appears to have been "to furnish a possible corrective to hasty legislation, noisy minorities, ruthless majorities, popular interference in financial plans, and the like, by an elaborate system of alternative procedures over which the president (always advised by the cabinet) has a nominal control that theoretically removes a matter from . . . the legislature to the executive; or in the end leaves it to the final tribunal of public policy, the people." [4]

ARTICLE 48:

1. FEDERAL EXECUTION

Of special importance among presidential powers, as events proved, were two conferred in one of the constitution's most remarkable articles, *i.e.*, 48. The first of these, commonly known as the power or function of federal execution, came into play when a *Land* failed to discharge its obligations under the constitution or the laws, and involved authorization of the president to compel it to do so by such means, *e.g.*, negotiation, as he might choose, and, if need be, "with the help of the armed forces." Here was a power equivalent to that wielded by President Lincoln in the American Civil War, even though, by more or less of a legal fiction, the force of the national government was in that instance employed against, not states, but citizens regarded as in rebellion. The power of federal execution in republican Germany lay by no means unused, even before the stormy period of executive rule dating from around 1930. In 1920, it was employed against Thuringia and Gotha, and in 1923 against Saxony, the president on each of these occasions suspending the state authorities and appointing a national commissioner

[1] Arts. 72–74

[2] Arts. 74–76.

[3] The closest approach to such would arise when, under plan (3), the president made final disposition of a disputed measure by refusing to submit it to the people

[4] F. F. Blachly and M. E. Oatman, *Government and Administration of Germany*, 68. It may be added that the president also had extensive power to issue decrees and ordinances.

to act in their stead. Before 1918, the emperor could take action to compel a disaffected state to fulfill its "constitutional federal duties," but only with the assent of the Bundesrat. The president of the Republic required no one's assent.[1]

2. EMERGENCY POWERS

The second significant power bestowed in Article 48 was that of dealing with public disorder or other emergency conditions. This is what the constitution said:

> "The Reich president may, if the public safety and order in the German Reich are considerably disturbed or endangered, take such measures as are necessary to restore public safety and order. If necessary, he may intervene with the help of the armed forces. For this purpose he may temporarily suspend, either partially or wholly, the fundamental rights established in Articles 114 [personal liberty], 115 [inviolability of dwellings], 117 [secrecy of postal, telegraphic, and telephonic communications], 118 [freedom of speech and press], 123 [right of peaceful assembly], 124 [freedom of association], and 153 [guarantees of property rights].
>
> "The Reich president shall inform the Reichstag without delay of all measures taken under Paragraph 1 [federal execution against the states] or Paragraph 2 [just quoted] of this Article. On demand by the Reichstag, the measures shall be repealed.
>
> "In case of imminent danger, the government of any *Land* may take preliminary measures of the nature prescribed in Paragraph 2 for its own territory. The measures are to be revoked upon the demand of the Reich president or the Reichstag.
>
> "Details will be regulated by a Reich law." [2]

A. NATURE AND EXTENT

Here was a truly remarkable grant of power, opening the way *within the limits of the constitution* (and this is the significant thing) for what was tantamount to presidential dictatorship. The provision went even farther than any existing under the Empire; for, whereas under the imperial constitution the emperor could declare martial law in any portion of the federal territory if public security was threatened, and follow up with emergency measures if Parliament was not in session (submitting them to that body for approval at the earliest opportunity), under the Weimar constitution the president could resort to emergency powers regardless of whether the Reichstag was in session. The Reichstag, to be sure, might demand revocation

[1] F. F. Blachly and M. E. Oatman, *op. cit.*, 71–74.

[2] From the translation of the constitution by M. Wolff appended to H. Kraus, *The Crisis of German Democracy*. The explanatory material in brackets has been inserted by the present writer for purposes of clarity.

of his emergency measures, but in point of fact it did so on only two occasions—in 1921 and 1930. Experience in the latter of these instances was further instructive in that after the president had cancelled two emergency decrees at the Reichstag's request, the Reichstag was itself dissolved, the decrees were reissued, and the legality of the whole procedure was upheld by the *Reichsgericht*, or Supreme Court. The danger of dissension and disorder, menacing the very life of the Republic, was such when the constitution was adopted that special power of summary action on the part of the executive seemed imperative; and the object of the paragraphs of Article 48 here under consideration was to enable the president to suspend private rights and, in general, to take such action against individuals and groups as he thought necessary to meet any emergency arising The grant of power was very broad. The rights guaranteed in as many as seven of the constitution's articles might be suspended in whole or in part. Not merely "rebellion or invasion" (which alone justify suspension of the writ of habeas corpus in the United States [1]), but any serious disturbance of, or even danger to, "public order and safety," could be made the basis of action. And the national law envisaged in the last paragraph of the article, which, had it been passed, might have imposed limiting conditions and procedures, was never enacted. Small wonder that, although no such term as "dictator" is to be found within the four corners of the constitution, the word rarely failed to appear in even the most restrained discussions of the famous article from 1919 onwards!

B. RESTRICTIONS

To be sure, the article plainly did not contemplate arbitrary or irresponsible action by the president and his advisers; indeed, it was written into the document expressly to prevent anything of that sort. In the first place, the power, although extraordinary, was derived only from the constitution, and was to be exercised within the bounds of that instrument —not as dictatorial powers have later been exercised in various countries of contemporary Europe, among them Germany herself since 1933. In the next place, its purpose was limited and defined, *i e*, "to restore public safety and order"—nothing more. Third, its use was to be temporary; the specified articles were to be "suspended" only "for the time being." Fourth, the power was in no wise excepted from the requirement laid down elsewhere in the constitution that every presidential order or decree should be countersigned by the chancellor or a competent minister. Fifth, every step taken must be reported to the Reichstag "without delay," and must be retraced if

[1] Constitution, Art 1, § 9, cl. 2.

the Reichstag so demanded. Finally, the president himself was responsible for what happened under Article 48, in the sense that he could be suspended from office by the Reichstag and removed by vote of the people for acts performed under it no less than for any others.

C. EMERGENCY POWERS AS ACTUALLY USED

The state of the country being what it was in 1919, those who voted to place Article 48 in the constitution probably expected it to prove something more than merely a gun behind the door. But hardly any one could have foreseen the rôle which it actually played during the next 14 years. Starting with seven emergency decrees issued even before the Reichstag was organized in 1920, the list lengthened until by September, 1932, it had reached the amazing total of 233.[1] At first, the decrees were promulgated to meet actual or threatened public disorder. In time, dangers from this source subsided, and many people concluded that, having served its purpose, Article 48 would become little more than an historical curiosity. In 1928, only one decree was issued, and in 1929 none. Already, however, the idea had developed in government circles that the state might be quite as seriously endangered by currency and other economic difficulties as by outbreaks of physical lawlessness, and as early as 1923 we begin to read of decrees forbidding the sale of Reichsmarks abroad, revaluing tax payments in terms of gold, and suspending reparations payments in kind; and in later years, the government, confronted with multiplying economic and political troubles, fell back more and more upon the great reserve of power contained in—or at all events read into—Article 48, until from 1930 onwards it was found relying almost exclusively upon this resource. Full and frank dictatorship might have gained the saddle in any case, but Article 48 became the springboard from which the leap was taken.[2]

The president was not intended, however, to become a monarch in disguise, and in the constitution he was hedged about with restrictions such that when dictatorship finally developed, it was not of his making and he was not the dictator. The chief executive was to be

[1] For the complete list, see L. Rogers *et al.*, "German Political Institutions: II, Article 48," *Polit. Sci Quar.*, Dec., 1932, pp. 583–594.

[2] See, in addition to the article cited in the foregoing note, F. F. Blachly and M. E. Oatman, *op. cit.*, 74–96, C. J. Friedrich, "Dictatorship in Germany?", *Foreign Affairs*, Oct., 1930, and "The Development of Executive Power in Germany," *Amer. Polit. Sci Rev.*, Apr., 1933, H. J. Heneman, *The Growth of Executive Power in Germany: A Study of the German Presidency* (Minneapolis, 1934); and G. Anschutz, *Die Verfassung des deutschen Reichs vom 11. August, 1919* (Berlin, 1930), 239–259.

strong, yet also titular head of a government operated on parliamentary principles. On the one hand, he was to have the exceedingly important independent power of selecting the chancellor and, on the latter's advice, the ministers, and also of dismissing these key officials if displeased with their measures and policies. On the other hand, he was placed under heavy restraint in that all orders and decrees issued over his signature must be countersigned by the chancellor or "the competent minister," who thereby assumed responsibility before the Reichstag, and also in that, whereas the president could of his own accord dismiss a chancellor and ministers who were unwilling to do his bidding, the Reichstag could on its part compel him to dismiss them, however acceptable they were to him, if it disapproved of their policies. Further limitations imposed upon the president in the constitution included, as already mentioned, the Reichstag's power to suspend him by a two-thirds vote and the people's power to remove him from office altogether. The matter of responsibility was complicated, and never had opportunity under normal conditions to become clarified, while the powers of suspension and recall lay wholly unused.

GENERAL CONSTITUTIONAL RESTRICTIONS UPON THE POWERS OF THE PRESIDENT

When, in 1925, Field Marshal von Hindenburg attained the presidency, many people imagined that republican government in Germany was imminently doomed. The aged chief executive had throughout his life followed the profession of arms, had been a thoroughgoing monarchist, and was known to have lost none of his loyalty to his former chief, the deposed Kaiser. He was also, however, a man of his word, and once he had taken oath to "keep the constitution and the laws of the Reich," [1] he so scrupulously performed his unaccustomed and unsought duties that his reelection in 1932 was viewed as a triumph for republicanism over the forces of reaction. Understanding (as had Ebert before him) that the presidency was meant to be a vital force in the government, he took advantage of chronic party confusion to follow to a great extent his own dictates in the selection of chancellors, and even directed chancellors-designate to form ministries from party groups which he himself specified. Departing still farther from British and French practice, he boldly made public his personal views on matters of legislation and policy, doing it in such a way, to be sure, as not openly to align himself with any particular party, yet under circumstances calculated to help turn the scales for or against important pending measures. In May, 1932, he

VON HINDENBURG AS PRESIDENT

[1] The oath was prescribed in Art. 42 of the constitution.

forced Chancellor Bruning and his cabinet from office, even though the deposed chieftain had but lately contributed powerfully to Hindenburg's reelection and at the time of his dismissal had at least a nominal majority in the Reichstag. In August following, after the National Socialists had made heavy gains in the Reichstag election of July 31, he invited Hitler to take a post in the von Papen cabinet, but flatly refused him the chancellorship—at the same time admonishing him to bear in mind his responsibility to the Fatherland and to the German people. Accepting the situation gracefully when, six months later, Hitler as chancellor had become inevitable, he lent reserved support to the new régime without being able to control it, and in later days was quite eclipsed by it; at his death, in 1934, the office, indeed, disappeared altogether.[1] His earlier activities very well indicate, however, the inherent vigor of the German presidency, in the hands of a vigorous man to be sure, yet quite within the bounds of the constitution.[2]

CHANCELLOR AND MINISTERS: FROM EMPIRE TO REPUBLIC

In imperial days, the place filled in other European political systems by a responsible ministry or cabinet was, as we have seen, filled by a chancellor, responsible only to the emperor; while the ministers were merely non-political administrative heads, answerable to the chancellor, and through him to the emperor likewise.[3] For two decades prior to 1914, a running battle was waged by liberal political elements in behalf of the principle of ministerial responsibility, with no immediate result, yet with increasing promise of ultimate success, and one of the major concessions of a hard-pressed régime as the War drew toward a close was a promise that thenceforth the chancellor should hold office only so long as he enjoyed the confidence of the Reichstag. At Weimar in 1919, the problem of what to do with the chancellorship, and what kind of a ministry to create, was naturally one of prime importance. It was taken for granted that the center of gravity in the new system should lie in the Reichstag, and that ministers, of whatever sort, should be made responsible to that body. It was even decided, as we have seen, to make the titular chief executive, the president of the Republic, directly answerable to Reichstag and people. But should there be a ministry constructed on the principle of full collegiality, as in

[1] See p 750 below

[2] G. Schultze-Pfallzer, *Hindenburg* (New York, 1932), E. Ludwig, *Hindenburg* (Philadelphia, 1935). On the presidency in general, see H. Finer, *op. cit.*, II, 1144–1160, F. F Blachly and M. E. Oatman, *op. cit.*, Chap IV, H J. Heneman, *op. cit.*, Chaps III–VI.

[3] See pp. 686–688 below.

Great Britain and France (and, as it proved, in practically all of the countries that adopted new post-war constitutions)—a ministry in which the chancellor (under that name or some other) should be only *primus inter pares*, and all members should participate equally in decisions and bear equal responsibility for what was done? Or should the chancellorship be perpetuated, with appropriate curtailment of powers, yet continuing on a different footing from the ordinary ministerial posts, and with chancellor and ministers organized on cabinet lines under what may be termed a limited collegial plan? There were those who favored going the whole distance and adopting the British and French system. Most groups in the Assembly, however, opposed so complete a break with the past; even Dr. Preuss was skeptical about the desirability of it. Notwithstanding the general liberal tone of the Assembly, the German authoritarian tradition occasionally cropped out. And the same practical considerations that influenced the decision for a strong president argued for a chief minister who should be something more than the usual sort of premier—one who should be sufficiently preeminent and dominating to supply the leadership, coordination, and control that the country's future seemed likely to require.

CHANCELLOR AND MINISTERS UNDER THE REPUBLIC—THREE POINTS OF DISTINCTION.

A decision in favor of the limited collegial plan was arrived at with no great difficulty, and as the system took form in the constitution and in later practice, chancellor and ministers, while spoken of collectively as forming "the government," *i.e.*, the cabinet, were found to differ in three main respects. First, as already observed,

1. MODE OF APPOINTMENT

the chancellor was appointed outright by the president of the Republic, the ministers by the president only on nomination of the incoming chancellor; and complete freedom in selecting the chancellor was designed to be one of the means by which the president could counterbalance the power of the Reichstag. As long as normal conditions lasted, the discretion enjoyed did not, however, prove materially greater than that of the French president in performing a similar function; in general, there was the same necessity for consulting the party leaders, and for reaching decisions dictated by the existing political situation. No more did the chancellor normally have a free hand in the choice of persons to be nominated for appointment as ministers. As in France, no single party—so long as constitutional government lasted—ever commanded a majority in the popular branch of parliament, all cabinets were by necessity coalitions; and the building of cabinet

3. RESPONSIBILITY

As already intimated, a third distinction drawn by the constitution between chancellor and ministers had to do with responsibility. In Great Britain, ministerial solidarity is so far established that, both in theory and in practice, responsibility is indivisible as between prime minister and other ministers; the group is responsible as a unit for whatever is done by one or all, and stands or falls together.[1] Under the Weimar constitution, responsibility was intended to be divided. The chancellor was made answerable for decisions and acts affecting the general course of policy, the ministers each for his administration of his own department; speaking broadly, the responsibility of one left off where that of the other began. Here again, however, notwithstanding that on several occasions individual ministers retired under fire without pulling their colleagues down with them, the tendency was toward a community of responsibility, on British lines. After all, it was not practicable to keep what the chancellor did and what the ministers did in air-tight compartments. By terms of the fundamental law, chancellor and ministers constituted "the government." Their functions inevitably gravitated into common channels, and, speaking broadly at all events, the officials themselves must go up or down in unison.

CABINETS OF THE PERIOD 1919-32

Nevertheless, it should not be inferred that even as it stood on the eve of the tempestuous events of 1932-33, the system had settled into the form made classic by the experience of other parliamentary governments. Far to the contrary, the oscillations of the cabinet between a popularly elected president and a popularly elected Reichstag, the frequent lack of dependable parliamentary majorities, and the extraordinary complexity of post-war problems tended constantly to shunt the mechanism off on new tangents, and thus to accentuate the differences between the Weimar set-up and its foreign counterparts. If, indeed, the constitution's authors supposed that they had created a system in which the elements making for stability were properly compounded, they were doomed to be sadly deceived. German republican cabinets consistently enjoyed—or endured—short and stormy lives. In the 14 years from 1919 to the establishment of Hitler's dictatorship in 1933, there were no fewer than 20 cabinets, with an average life of but little more than eight months—only two months more than the average for the 25 French cabinets during the same period. The shortest-lived was the Stresemann seven-week cabinet of 1923; the longest, the Bruning cabinet of 1930-32,

[1] See p. 82 above.

serving in their individual capacities as directors of the respective branches of administration and collectively (along with the chancellor) as "the government" of the Reich. Ministers without portfolio have been familiar enough in Great Britain, France, and other countries, and in republican Germany they were fairly numerous, being always recognized, moreover, as on a common footing with the rest. On the other hand, there were sometimes fewer ministers than departments, a single minister acting as head of two, or even more, departments, although never with more than a single vote in the cabinet council. Unlike the British prime minister, the chancellor was not obliged to take a portfolio in order to be entitled to a salary.[1] As a rule, he did not do so. There were, however, a good many exceptions, as, for example, Stresemann, who was twice both chancellor and minister of foreign affairs, and Dr. Luther, who in 1925–26 was at the same time chancellor and acting head of the two ministries of food and economic affairs.

CABINET FUNCTIONS

From the foregoing account of executive organization, the functions that fell to the cabinet are perhaps reasonably apparent. A word of summary may, however, be desirable. Half a dozen main phases are to be noted. 1. Under the conditions described above, the cabinet (the chancellor ostensibly, but in reality chancellor and ministers together) formulated the broad lines of national policy. This it did by discussion and vote, in meetings held privately, as in the case of the British cabinet, and with ordinarily no information given out as to the position taken by individual members of the group, and with, of course, no publication of minutes. 2. The orders, decrees, and other acts of the president of the Republic must in any event be countersigned by the chancellor or an appropriate minister, and, as a matter of fact, usually comprised actions which the chancellor, a minister, or in important matters the cabinet as a whole, had initiated. This was true no less of the exercise of the power of federal execution and of the emergency, or dictatorial, powers conferred by Article 48 than of the performance of acts of minor and routine importance. 3. While the Reichstag might initiate legislation, the cabinet was charged with formulating and introducing bills, and as a matter of practice, most legislation was originated in this way. Any bill which an individual minister desired to present to the Reichstag or Reichsrat must first be submitted to the cabinet as a whole for consideration and decision, and,

[1] The Ministers of the Crown Act of 1937 in Great Britain did not change the situation there, except by establishing a statutory connection between the prime ministership and the first lordship of the Treasury (see p. 76 above).

CHAPTER XXXV

The Party System to 1930

THE workings of the parliamentary system described in the foregoing chapter were influenced profoundly by the number, nature, and functioning of political parties. Under the Empire, parties, although numerous and in some instances vigorous, were significant in only a rather negative way. They could criticize, and even paralyze, governments; but they could not turn them out or compel the formation of governments enjoying parliamentary confidence. After 1918, the situation was different. A greatly increased electorate furnished material for party followings of larger proportions. Parliamentary government, opening a way to party power and responsibility, gave new impetus and vitality to party life and provided wider scope for party activity. Proportional representation assured all groups of even moderate size some measure of influence in the Reichstag. To be sure, the Weimar constitution said almost nothing about parties; it mentioned the subject only once, and then negatively, in a stipulation that public officials should be "servants of the whole community and not of a party." [1] This, however, was only because the authors of that instrument rightly believed that parties should consist of free and non-institutionalized associations of persons; [2] and in point of fact the period during which the constitution was in full operation witnessed by all odds the most vigorous party life in all German history. So elaborate and bureaucratic, indeed, did party organization become that the complaint was often heard that the party was everything and the individual nothing.

INCREASED IMPORTANCE OF PARTIES UNDER THE REPUBLIC

From the revolution of 1918 thus flowed significant changes in the rôle played by parties, as also in their mechanisms and techniques. As recognizable segments of the

LEADING PARTIES:

[1] Art 130. It, however, fully assumed the existence of parties, as, for example, in its provision for proportional representation.

[2] S. Neumann, *Die deutschen Parteien: Wesen und Wandel nach dem Kriege* (Berlin, 1932), 22–23.

body politic, they, however, by no means disappeared. To be sure, new names were adopted; with a view to legitimizing itself in the new social order, nearly every party hastened to incorporate into its official title the ingratiating term *Volkspartei, i.e.*, "people's party." And of course some elements entered into new combinations to meet the altered situation. Almost without exception, however, the nominally reconstructed parties turned out to be little more than the old groups under new labels. Furthermore, the party set-up as a whole showed remarkable continuity throughout the entire predictatorial period, at least in the sense that, with one or two notable exceptions, the list of principal parties was the same at the end as at the beginning, however altered their relative importance and their general position in the life of the nation. Passing over the numerous and ever-shifting *Splitterparteien* ("splinter parties") which always cluttered up the political scene, one finds the major parties of the period some seven or eight in number, as follows:

1. "NATIONALSOZIALISTISCHE DEUTSCHE ARBEITERPARTEI," OR NATIONAL SOCIALISTS

On the extreme right were the National Socialists, in a way the most remarkable party of all in that, although not even existing when the Republic was founded, and winning its first significant representation in the Reichstag only in 1930, it attained major rank in the elections of 1932, bore Adolf Hitler to dictatorial power in 1933, and thereupon became the sole party in all Germany having a legal right to existence. Further comment upon this party may be deferred until we later take up the Hitlerian dictatorship,[1] save to note that the movement from which the party sprang started in 1919 in Bavaria; that it found in Hitler a leader of rare gifts as an agitator; that, although at the outset tinged rather vaguely with socialism, the party devoted its energies fundamentally to combating Marxism and the internationalism, pacifism, and class war supposed to be inherent in that body of doctrine; that it was quite as hostile to parliamentarism as was the Communist party, and imbued with ideas that led straight to fascism and dictatorship; that its great objectives were racial homogeneity, national unity, and recovery of national power; that it marched to supremacy by capitalizing the humiliation and indignation of Germans in the post-war years, their economic difficulties, and their readiness in an hour of desperation to turn to any leader or party making large and plausible promises; and that, although recruited mainly from the middle classes and peasantry, the party drew support from nearly all elements of society and in its

[1] See Chap xxvi below.

membership, as well as in its program, became perhaps the most broadly national of all.

2. "DEUTSCH-NATIONALE VOLKSPARTEI," OR NATIONAL PEOPLE'S PARTY

Next to the National Socialists, and, until their rise, occupying the principal position on the right, were the Nationalists. Perpetuating the old Conservative party, and absorbing various other pre-war conservative groups, this party was for several years after 1918 the largest of all, excepting only the Social Democrats. Conservative strength in pre-war times lay largely in those portions of the country which were predominantly agricultural; and the backbone of the Nationalist party continued to be the landed interests of eastern Prussia. Being devoted, however, to monarchy and instinctively hostile to everything that smacked of socialism, the revamped party drew support from monarchist die-hards, from officials and army officers of the old days, from industrialists, and from financiers everywhere, as well as from large numbers of middle-class people who feared the policies of a régime in which the way seemed open for almost any form and degree of socialistic experimentation. At first a party of protest purely, the Nationalists were in time compelled to face the question of whether they would cooperate with a republican government. One wing was always opposed to doing so. The majority, however, took a more practical attitude, and throughout most of the decade after 1919 (particularly after 1924) the party participated actively in the Reichstag, and at times was represented in the cabinet. Under the leadership of Alfred Hugenberg, however, it in 1928 renounced in principle its compromise with the Weimar system, and small groups which split off in protest against so reactionary a policy were never able to muster much strength. The weight of the party was always thrown to the support of private property and against socialism and communism; the League of Nations was held in abhorrence and revision of the Versailles treaty, especially as to boundaries, colonies, and reparations, ardently advocated, protective tariffs, agricultural development, promotion of Christian religious education, and strong measures for land and sea defense held high positions in the party platform.

3. "DEUTSCHE VOLKSPARTEI," OR GERMAN PEOPLE'S PARTY

Organized in 1918 from the more conservative wing of the old National Liberal party, the People's party was essentially a party of business and industrial leaders, supported by a sprinkling of military officers, professional people, and conservative bourgeois folk. Originally quite as strongly de-

voted to monarchy as were the Nationalists, the party gradually, under the leadership of the statesmanlike Gustav Stresemann, took on a republican tinge, at all events, it set itself against any restoration of monarchy not accomplished by strictly constitutional means. Although relatively liberal on many matters, it could not be described as democratic, toward orthodox socialism it was more tolerant than the Nationalists, although no less in disagreement. It favored a stronger second chamber, a more powerful Reich president, control of the Reichstag by a middle-class *bloc*, centralization of authority in the national government, and protective tariffs for the benefit of industry. In foreign affairs, it advocated German entry into the League of Nations and supported the Locarno treaty, but demanded the union of Austria with Germany and insisted upon revision of the Versailles peace settlement. Throughout its career, it lived to a considerable extent on the prestige of its founder and leader (until his death in 1930), Stresemann.[1]

4. "ZENTRUMS-PARTEI," OR CENTER PARTY

Founded shortly after 1870 to combat the anti-papal policies of Bismarck, and supported by a substantial majority of the politically active Catholic population of the country, the Center party held for many years before the World War more seats in the Reichstag than any of its competitors. Passing over into the republican period under the same name,[2] and otherwise largely unchanged, it usually ranked third. Efforts to draw support from non-Catholics met with some success, but the party was always held together, and in fact given an exceptional coherence and stability, by the religious tie. Geographically, its strength lay principally in southern and western Germany, but socially it was unusually cosmopolitan, bringing together Catholics of all classes—industrialists, landholders, clergy, peasants, laborers, and others—a circumstance which not only caused it to be less identified with a particular economic interest than were most of the other parties, but operated to make of it an essentially moderate—in other words, a true center—party. Next to the Social Democrats, it was also probably the best organized of the parties. Before the War, one would never have expected to find it working with socialists. At Weimar, however, it collaborated with the Social Democratic party and with the Democrats in making the new constitution; and afterwards, because of its strategic position

[1] R. Olden, *Stresemann* (New York, 1930), A. Vallentin-Luchaire, *Stresemann* (New York, 1931).

[2] Officially, the party was rechristened "Christian People's party," but the new name never drove the old one out of common use.

midway between Right and Left, it was represented in every cabinet up to the collapse of responsible government in 1933, supplying, indeed, the chancellor in more than half of the number. With a constituency so varied, it naturally contained elements differing widely on matters other than religion, and as early as 1919 its sympathy with measures of centralization prompted its large Bavarian following to organize itself into a separate Bavarian Christian People's party. Except, however, on issues involving states' rights, this regional party, although more conservatively inclined than the parent body, usually followed the *Zentrum's* lead. Believing fundamentally in private property and private initiative, the affiliated parties nevertheless put much stress on ideals of social justice and welfare. They opposed state control of schools, advocated religious education, favored measures for the improvement of agriculture, and in foreign affairs assumed a generally conciliatory attitude, although strongly advocating a union of Catholic Austria with Germany.

5. "DEUTSCHE DEMOKRATISCHE PARTEI," OR DEMOCRATIC PARTY

We noted that the right wing of the old National Liberal party passed in 1918 into the new People's party. Under the leadership of Dr. Hugo Preuss, Friedrich Naumann, and others, the left wing at the same time merged with an earlier Progressive party to form a new Democratic party—a party whose subsequent history unhappily symbolizes the tragedy of German politics in post-war years. Enlisting an exceptional number of men of education and talent, and winning seats (75) in the Weimar Assembly exceeded only by those of the Social Democrats and Center, the party contributed brilliantly to the making of the constitution, participated in earlier republican cabinets, and formed one of the most promising bulwarks of the new political order. In this latter fact, however, lay its undoing. Defending the Republic by appealing to all groups—economic, social, and religious—to subordinate their differences and rally to the support of the nation's larger interests, and developing a moderate, non-spectacular program of electoral reform, reorientation of the *Land* governments, controlled capitalism, tax reform, promotion of social services, and peaceful revision of the Versailles settlement, the party might well in normal times have held and further extended the support of the middle-class and professional and intellectual groups to which it appealed. The times, however, were not normal. Impatient with the leadership of moderates, and driven by hardship and disillusionment, the classes mentioned turned rather to the programs of extremists, right or left, and from the high point of 1919 the party's fortunes declined stead-

ily until, in 1930, it formally disbanded, most of its members going over into a newly formed and never very successful *Staatspartei*, or State party, founded on principles appreciably more conservative, and even reactionary, than those of the party that had started off so hopefully a dozen years before.[1] The fate of the Democratic party is perhaps that which any moderate, liberal party unfortunately must expect in times of prolonged and severe crisis, *i.e.*, depletion of its ranks, repudiation of its policies, and even sheer extinction.

6. "SOZIAL-DEMOKRATISCHE PARTEI DEUTSCHLANDS," OR SOCIAL DEMOCRATIC PARTY

Under war-time stress, the great party of the Left in imperial days, the Social Democrats—never wholly united on questions of policy—broke asunder in 1916. To a degree, the breach proved permanent, for although near the end of 1922 a portion of the "Independents" rejoined the majority party, the larger element went over definitely to the Communists. Apart from this secession, unity was regained, and in later times there was but a single Social Democratic party. Until the National Socialists reached their zenith in 1933, this party was the largest (with almost a million dues-paying members), and in other ways the most important, in the country. At Weimar, it held 40 per cent of the seats and had a major voice in framing the constitution; in one Reichstag election after another, it polled more votes than any of its competitors—on several occasions, more than twice as many as any one of them; it furnished the first president of the Republic and was heavily represented in a large number of cabinets (although holding the chancellorship only during brief periods in 1919–20 and 1928–30); in Prussia particularly, but in most other sections of the country as well, it dominated or shared extensively in *Land* and local governments. No German party—scarcely, indeed, any party elsewhere—was organized more effectively. Before the War, the party program was, at least in theory, Marxian. Even after 1918, the party nominally adhered to the principles of the Second International. The bulk of its members, however, always inclined toward socialism of a distinctly practical and moderate character, and this bent was considerably accentuated by years of association with Democrats, Centrists, and other moderates in the sobering responsibilities of establishing and operating a "bourgeois" parliamentary government. Edging away from many Marxian concepts, the party

[1] Other elements which entered into the making of the State party included young liberals formerly belonging to the People's party and a separate organization known as the People's National Union, which latter, however, almost immediately broke away again

dropped others completely. As a result, it, like the British Labor party, ceased to be merely a class party, a party of manual workers Before the War, 90 per cent of its dues-paying members were such, in 1930, only 60 per cent, while 10 per cent were employers, 3 per cent officials, and 17 per cent housewives. From two-thirds to three-fourths of its parliamentary representatives under the Republic were trade-union officials, party officials, writers, and journalists. Although naturally strongest in the cities, its following was so well distributed throughout the country that in 1928, for example, there were only three electoral districts out of a total of 35 in which the party did not poll at least 100,000 votes. In the realm of domestic policy, the party opposed communism, upheld the Weimar constitution, supported parliamentary institutions. favored Reich unity with nevertheless a good measure of local self-government, encouraged factory councils and other forms of functional grouping, opposed militarism, resisted ecclesiastical control of education. and advocated advanced social legislation, along with a program of gradual socialization. In the domain of foreign policy, it supported the League of Nations, favored disarmament, advocated free trade (or at all events only moderate protection), upheld the rights of minorities, and urged revision of the peace treaties by regular methods, especially with a view to relieving the working classes of the burden of reparations.

7. "KOMMUNISTISCHE PARTEI DEUTSCHLANDS," OR COMMUNIST PARTY

On the extreme left stood the Communists. Formed in the closing days of 1918 from Spartacist and other elements that were imbued with bolshevist doctrine and wholly opposed to any mere political revolution, the party early became the German section of the Third International [1] and at all times took its orders—drawing also funds for its support—from Moscow. At the outset, it had nothing but scorn for the Social Democrats' acceptance of the "inevitability of gradualness" and of coalition with bourgeois parties, and, as observed above, it refused to have any share in the election of the Weimar Assembly and therefore in the making of the republican constitution. Discovering, however. that the German masses were not revolutionary at heart, and that parliamentarism had apparently come to stay, the party decided as early as 1919 that the only practicable course under the circumstances was itself to become "parliamentary," to participate in elections, and to wring such advantages as it could from the give and take of politics, pending the arrival of times more propitious for the attainment of

[1] See p. 888 below.

its ends by direct and violent action. Joined in 1922 by those of the Independent Socialists who did not choose to go back into the Social Democratic ranks, the party thenceforth participated in national, state, local, trade-union, and practically all other sorts of elections, and usually was found well represented in legislative and other bodies. Denouncing all other parties—including the Social Democrats—as dominated by the "exploiting class," and playing unceasingly upon popular discontent engendered by the country's troubles, Communist manipulators and agitators achieved increasing success, until finally in the Reichstag elections of November, 1932, nearly six million popular votes were polled and a total of 100 seats captured, mainly in larger cities like Berlin and Hamburg, and in sections of the Westphalian and Saxon industrial areas, where heavy gains were realized at the expense of the Social Democrats. The principles of the party were those of purest Marxism, adroitly applied to the German situation on lines calculated to make effective appeal to the workers. The peace settlements were portrayed as examples of capitalistic imperialism; stress was laid upon the need for cooperation among the oppressed classes of all countries and races; and the achievements of Russia were depicted in glowing terms as evidences of what might be expected in a German soviet state based on a proletarian dictatorship.[1]

PARTY ORGANIZATION: GENERAL ASPECTS

Persons far removed from the scene are likely to think of Continental European party systems as pretty much of a pattern, and therefore to suppose that up to the time when all parties except the National Socialists were suppressed in Germany, the rapidly shifting multi-party situation characteristic of France was substantially duplicated on the opposite side of the Rhine. Nothing could be farther from the truth. An excessive number of parties, to be sure,

[1] On the structure and history of German parties from the World War to the break-up of the party system by Hitlerian decrees of 1933, there is little in English outside of ephemeral newspaper and magazine material. Attention may, however, be directed to H. Finer, *Theory and Practice of Modern Government*, I, 558–600, and P. Kosok, *Modern Germany*, Chap. VII, where the individual parties are described briefly. Party lists, with very brief characterizations, appear in the annual issues of W. H. Mallory (ed.), *Political Handbook of the World*, published by the Council on Foreign Relations. Outstanding German works include L. Bergstrasser, *Geschichte der politischen Parteien in Deutschland* (6th ed., Mannheim, 1932), S. Neumann, *Die deutschen Parteien; Wesen und Wandel nach dem Kriege* (Berlin, 1932), O. Koellreutter, *Die politischen Parteien im modernen Staate* (Breslau, 1926), F. Salomon, *Die deutschen Parteiprogramme* (Leipzig, 1926, and new ed. by W. Mommsen and G. Franz, Leipzig, 1931–32). On the Social Democrats, see especially R. Lipinski, *Die Sozialdemokratie*, 2 vols. (Berlin, 1927), on the Center, J. Schaff, *Die deutschen Katholiken und die Zentrumspartei* (Cologne, 1928), and on the Communists, E. Thalmann, *Volksrevolution über Deutschland* (Berlin, 1931).

had been all too characteristic of the German Republic; lesser ones had formed and vanished with quite as much alacrity as among the French. Even under the Empire, however, the larger parties were more highly integrated and more elaborately organized than those of France; and until the National Socialist dictatorship drove them from the field in 1933, this was certainly no less true under the Republic. The rigidity of party organization—the power of party bureaucracy—was, as mentioned above, a subject of frequent complaint, especially among the younger elements in the electorate. In the opinion of an American authority, no party in the world, unless possibly the Conservative party in Great Britain, was as well organized as was the German Social Democracy when overwhelmed by the dictatorship;[1] and some of the other parties were not far behind.

Except for the Communists, who modelled their machinery on that of the parent party in Russia, all of the major parties (and, within their limits, many of the minor ones as well) were organized on somewhat similar lines. To begin with, they—like many other European parties—had memberships of more fixed and definite character than are boasted by any American party. Persons who desired to be recognized as members of a given party were required not only to signify adherence to the party's principles but to be enrolled on the party list, and in most cases to make regular contributions in the form of dues—although it must be added that the Social Democrats alone proved able to make this last-mentioned regulation reasonably effective. Practically all of the parties provided in their constitutions for the expulsion of disloyal members; and while there is no record of "purgings" carried out with such thoroughness as those periodically undertaken by the Communist party in Russia and by the Fascists in Italy, discipline seems in general to have been enforced rather effectively. One highly important means of holding in line members having political aspirations was the exclusive power which the party managers possessed to select candidates for seats in the Reichstag and other legislative bodies. No one might be a candidate except under a party banner, and no one could expect a party nomination unless of known loyalty and regularity. Women, of course, were party members equally with men. Active as voters, they also entered official life, and in 1930 as many as 40—chiefly Social Democrats—were to be found in the Reichstag.[2]

Speaking generally, political parties in Germany were organized

[1] J. K Pollock, in *Amer. Polit Sci Rev*, Nov., 1929, p. 863.
[2] G Parkhurst, "German Women in Politics," *Harper's Mag.*, July, 1930

far more effectively than those in France; only in Great Britain, indeed, were they matched in this respect. In all instances, the supreme party authority was the *Parteitag*, or national congress, consisting of delegates from the various electoral districts in proportion to the party vote or to the party membership therein, together with the party members in the Reichstag and the members of certain of the principal party committees. Endowed with full and exclusive authority to make and amend the party constitution, to draw up and revise the party program,[1] and to decide major questions of party policy, this deliberative body met as a rule annually in the case of the smaller parties, although in that of the larger ones somewhat less frequently (once in three years, in Social Democratic practice) as a means of reducing expense. As an executive authority, each party had a *Parteivorstand*, or executive committee, with a *Vorsitzender*, or chairman, serving as official party head. Both of these agencies were chosen by the party congress in the case of the Democratic, Center, and Social Democratic parties, although differently in other instances. All important parties maintained a sizable secretariat at the *Zentrale*, or national headquarters, in Berlin for carrying on the routine of party administration;[2] and in nearly all instances the chairman and executive committee were aided by a special committee (*e g.*, the *Parteiausschuss* of the Social Democrats) consisting of delegates from the districts, and meeting on call to settle matters which required deliberation but could not be postponed for decision by the party congress.

PARTY MACHINERY: 1. NATIONAL

Aside from the Communists, who had built up their national organization from local units modelled on those employed in Russia, the parties regularly used the electoral district as their principal unit or area for local organization. Not every party was organized in every one of the 35 districts, but all districts had more than one party organization; and in all instances this organization more or less exactly reproduced the features of the national machinery, on an appropriately smaller scale. Within the district were village and city organizations, provincial and county organizations, built into a hierarchy in which each unit was inte-

2. LOCAL

[1] It was significant of the power of the German party organizations over the party members, including candidates, that the congresses made and imposed unified party programs in a fashion wholly foreign to English and French parties except to a certain extent in the case of parties to the leftward See pp 313, 552 above

[2] The Social Democrats had the most pretentious central office, occupying several floors in a large building owned by the party and housing the newspaper *Vorwarts* and other party publications

grated with the others, and with a district congress or convention, a district executive committee, and a district headquarters functioning within their respective spheres as did the national agencies just enumerated. Many of the local party officials, notes the authority cited above, were also members of the Reichstag or of the local *Landtag*, *Kreistag*, or *Gemeinderat*, and worked at party headquarters when their legislative duties permitted.[1]

PARTY PROPAGANDA

Thoroughness of party organization was matched by vigor of party administration and propaganda. Elections—national, *Land*, and local—were numerous, collapse of parliamentary majorities might precipitate them at almost any time; and as a rule they were fought bitterly. Parties, therefore, had strong incentive to keep their organization at top-notch efficiency, as well as to utilize every means at their disposal in recruiting new members. Committees on agriculture, business, municipal affairs, and other public concerns helped formulate a party's views and proposals and impress them upon the voters. Other committees worked with special classes of the electorate, *e.g.*, women, officials, and new voters. Summer schools were held, excursions and celebrations organized, courses of lectures provided, publications of astonishing number and variety issued. The printing press was, indeed, utilized to the utmost—far more than in Great Britain, France, or the United States. Regular party magazines, sometimes of a high order, were published; special magazines for women, for the young, or for other special groups, were issued; millions of copies of pamphlets and circulars inundated the country, no fewer than 72,000,000 pieces of such propagandist literature being put out by the Social Democrats alone in a single year, and a year that did not even see a Reichstag election.[2] Newspapers were almost uniformly partisan, there being, after 1919, hardly such a thing as an independent press. *Vorwärts* was a leading organ of the Social Democrats, *Germania* of the Center, the *Kolnische Zeitung* of the People's party, *Volkischer Beobachter* and likewise *Der Angriff* of the National Socialists, *Die Rote Fahne* of the Communists, and so on down the list.[3]

At election time, propagandist activities were, of course, re-

[1] J. K. Pollock, *loc. cit*, 869

[2] J. K. Pollock, *Money and Politics Abroad*, 266

[3] The *Berlmer Tageblatt*, the *Frankfurter Zeitung*, and a few other papers were, however, somewhat more independent For an extensive list of German newspapers in 1932, with their party affiliations, see W. H. Mallory (ed), *Political Handbook of the World* (1933), 76–77.

doubled. Comparatively little use of the radio was made as yet, but in no other direction was effort or expense spared. Mass meetings, with amplifiers and moving-picture machines, were held, indoors and out; campaigners swept through the country by automobile; cylindrical bill-boards were plastered with posters, many distributed from party headquarters in Berlin, others prepared in the districts with a view to special local interests and susceptibilities; pamphlets and leaflets were passed out at meetings, on the streets, and even from aeroplanes; illustrated newspapers issued merely for the period of the campaign were given wholesale circulation and, in the opinion of observers, were widely read. Altogether, it is doubtful whether the technique of appealing to a huge electorate had been developed farther in any European country—an appeal, be it noted, which was almost entirely by and in behalf of the party as such, rather than in behalf of individual candidates, since, quite contrary to the situation in France, where the candidates largely make their own campaigns, it was in Germany the *party*, rather than candidate A or B, that the voter was urged to support.

PARTY FINANCE

Organization, propaganda, and electioneering on so grand a scale are, of course, expensive. By 1930, the total annual outlay of the Social Democratic party, for both national and local purposes, amounted to almost fifteen million marks, or upwards of four million dollars. At the same time, the Nationalists were spending six to seven million marks a year, the National Socialists four to five million, the People's party about three million, the Center a million and a half, the Democratic or State party more than a million, the Communists probably as much. With some allowance for minor parties, the total, in the opinion of the best authority on the subject, ran in the year mentioned to approximately twenty-eight million marks, or seven million dollars—a sum larger by far than the aggregate for British parties and surpassed only (in presidential years) in the United States.[1] The same authority estimates that of this total, something like three-fourths was spent during electoral campaigns, the remainder on general party work in the intervals between campaigns; although in the case of the Social Democrats the exceptional activity maintained between campaigns resulted in lowering the proportion spent on actual elections. As in France, but contrary to the situation in Great Britain and the United States, there were no legal limits upon what might be spent either by a candidate personally or by friends and party workers

[1] J. K Pollock, *op cit*, 215–216

in his behalf. Furthermore, there were no requirements, as in the United States, that the amounts and sources of campaign contributions be made public.

HOW PARTY FUNDS WERE RAISED

The methods of raising money were various. The Social Democrats depended almost altogether upon the weekly contributions, or dues, required of their members by the party constitution, men paying more than women, and with reductions allowed for illness and unemployment. The system worked admirably. From approximately a million members, forty-two million individual contributions of this nature were received in 1929, and not even British Labor affords a more striking example of a party whose sinews of war are drawn (as ideally they should be) from the party rank and file as distinguished from large and more or less mercenary contributors. Other parties—notably the Democrats and the Center—sought to introduce the same plan, with variations appropriate to organizations of a more definitely bourgeois character, but no one of them met with equal, or even approximate, success in administering it, dues were indeed collected, but in nearly all cases from only a minor fraction of the party membership. The upshot was that the bourgeois parties were forced to depend mainly upon such voluntary contributions as special appeals, particularly at election time, availed to bring forth—supplemented, especially in the case of parties like the Nationalists and the People's party which boasted many members of means, by large donations on the order of those on which such a party as the British Conservatives largely subsists. Such donations naturally came partly from well-to-do party members who were sincerely interested in their party's well-being. But they came also from large businesses, banks, and other corporate interests, which, following a practice by no means unknown in our own country, not infrequently contributed to two or three, or even practically all, parties simultaneously. Sometimes such contributions reflected disinterested endorsement of party principles, but more often they were made for a price—commonly a favored position on the list of party candidates for a member or good friend of the corporation making the gift. Practically all parties except the Social Democrats were inclined to favor as candidates persons who could contribute substantially to the cost of campaigns in their districts; practically all expected party officials and party members holding public office to make contributions; and a plan, introduced originally by the Social Democrats, of charging admission to campaign meetings at a rate sufficient to cover the costs involved (although an American can hardly imagine it

working in his own country) relieved party treasuries of considerable burdens.[1]

SOME GENERAL CHARACTERISTICS OF GERMAN PARTIES IN THE WEIMAR PERIOD:

1. TENDENCY TO "SPLINTER PARTIES"

Asked to indicate major characteristics of the German party system as it functioned during the first decade of the Republic, one might single out the following. First, the marked tendency to multiplicity, as seen in the existence not only of as many as seven or eight parties of substantial size, but of absurdly large numbers of more or less evanescent "splinter" parties and groups. However far out of line with the situation of today, there then seemed still to be truth in Bismarck's observation that the average German citizen is unhappy unless he has a party of his own. At the Reichstag election of 1928, as many as 30 different parties offered Reich lists; at that of 1930, a total of 24. Every national campaign prior to 1933 brought into being a host of little parties, set on foot by ambitious politicians or by disaffected groups —so-called parties, at all events, with often whimsical names and still more whimsical programs. The country had a strong multi-party tradition; the unsettled character of the times tempted to ill-considered party movements in all possible directions, proportional representation, together with national and state electoral laws enabling very small numbers of voters to nominate lists of candidates, supplied further opportunity and incentive. Many of the minor parties, of course, never won representation in the Reichstag, and sometimes the party situation in that body was simplified by decisions of certain of the lesser groups to pool their strength. There was always, however, a heavy wastage of popular votes on party lists representing mere "isms"; and even the larger and more stable parties were so numerous as not only to confuse the voters, but seriously to impede the free working of parliamentary government.

2. EXTENSION OF NATIONAL PARTIES INTO THE FIELD OF LOCAL GOVERNMENT

From the strength of party organization and intensity of party life resulted a carrying over, in an unusual degree for Germany, of national politics into state and local affairs. In imperial times, party politics on the whole entered but

[1] During the second electoral campaign of 1932 (Oct–Nov), when all parties were short of funds, the National Socialists resorted to the solicitation of contributions by uniformed agents stationed on the streets of large cities The Social Democrats also tried the plan

The only available account of German party finance is that given by J K Pollock in Chapters xii–xvi of the volume cited. Chapter xv is devoted to a discussion of the influence of money in politics

slightly into municipal and other local government. After 1919, it was a matter of frequent remark, tinged with regret, that local councillors and legislators, elected as Nationalists, Social Democrats, or what not, felt it incumbent upon them to carry their party principles and poses into the handling of even the most ordinary matters of purely local concern.

3. TENDENCY TO ECONOMIC AND SOCIAL PARTICULARISM

In all countries, and at all times, political parties have tended to draw their support from particular classes of people and to frame their policies to serve the interests of those classes. To the extent to which this tendency prevails, they fall short of being broadly national and become more or less frankly particularistic, on geographical, racial, occupational, or other lines. German parties, under both Empire and Republic, were exceptionally particularistic. It was not merely that their strength was in most cases largely localized in given sections of the country; to a degree, this is true of English parties, and of American parties as well. The significant thing was the extent to which most of them represented and cultivated particular economic and social interests, as seen in their principles and programs, and even more concretely in their selection of candidates and the order in which candidates' names were placed on ballots.

4. TENDENCY TO DOCTRINAIRISM

As compared with English and American parties, German parties were, like those of France, inclined to be doctrinaire. They held and propagated diametrically differing views not only on matters of immediate policy, but on such fundamentals as the nature of the state, the ends of government, and the processes of political action, they put forth lengthy programs which they supported by "a system of doctrine reading back from the merest daily detail to ultimate metaphysics";[1] they clung resolutely to their separate identities and (with a few notable exceptions) cooperated with other parties in a grudging spirit. Ten years of wear and tear of parliamentary life under the Weimar constitution undoubtedly rubbed off some of their angularities and left them—or most of them—more practical-minded, and even tolerant. But they still had more of a philosophical bent than the parties of most other countries.

5. DOMINANCE OF THE PARTY BUREAUCRACY

As indicated above, a salient feature of the German party was its thoroughgoing integration under the management of the bureaucracy of party officials constituting the "machine." Ele-

[1] H. Finer, *Theory and Practice of Modern Government*, I, 598

ments of democratic control were in some cases, notably in that of the Social Democrats, not altogether lacking. But as a rule the party directorate governed with an iron hand—nowhere more so than among the Communists. It called the party congress, prepared the agenda for the meetings, and largely dominated the proceedings; it collected and dispensed the party funds, it chose the candidates and assigned them an order of priority on electoral lists which, as we have seen, the voter had no option but to accept; it maintained strict control over the persons elected, and wielded disciplinary powers over the general rank and file; amid all, it found means of perpetuating its own authority. Criticism of this virtual dictatorship was voiced on plenty of occasions, with the "bound list" of candidates, the scheme of national lists, and indeed the whole proportional electoral system, as principal targets. Nevertheless, it remained true alike that "the parties were everything and the individual nothing" and that, in the words of Professor Koellreutter, the party directorate was "the master and not the servant of the voters."[1]

A DECADE OF PARTY HISTORY:

The political drama enacted by German parties and their leaders after 1919, on a stage swept by fierce currents of passion and unrest, was one of extraordinary interest and significance. As its successive acts unfolded, political power was observed shifting ever farther from left-center to right, from moderation to bourgeois (as distinguished from proletarian) extremism, until in 1933 it burst upon an astonished world in the form of a frank dictatorship of an ultra-nationalist, chauvinist party, the National Socialists, which did not so much as exist when the Republic began. This latter devastating spectacle will require attention presently, but first a word about the party conflicts that preceded it.

1. 1919-24

As observed elsewhere, the general election of 1919 at which the Weimar Assembly was chosen—the first held in the country after 1912—resulted, notwithstanding the turbulence of the times, in a notable triumph for the moderate parties. Majority Socialists, Center, and Democrats together won almost 80 per cent of the seats, and together they drew up the constitution. Hardly, indeed, was the work of the Assembly started before the three joined in support of what was in effect a coalition government. Bombarded from the right by monarchist reactionaries and from the left by Independent Socialists and Communists, and weakened by a Centrist schism which

[1] *Die politischen Parteien im modernen Staate*, 50.

resulted in the establishment of a separate Bavarian Christian People's party, this coalition fixed June 6, 1920, as the date for electing the first Reichstag to be chosen under the new fundamental law. In this contest, all three parties lost heavily. The coalition as a whole slipped from 326 seats to 225; the Nationalists, People's party, and Independent Socialists together won 124 more than in the previous election; and the Communists made their initial appearance with two. As a result, a new coalition took office, composed of Centrists, Democrats, and People's party representatives; and the first distinct shift toward the right, signalized by displacement of Majority Socialist by People's ministers, became a reality. Already a régime planned largely by socialists was in the hands of a government in which there were no socialists at all. During a period of the most baffling troubles, both domestic and foreign, the pendulum swung back far enough in 1922 to permit the now reunited Social Democrats to enter a reconstructed ministry in place of the People's party representatives In years following, however, it was manifest that the left-center parties were steadily losing ground, primarily because of popular discontent with the domestic chaos produced by efforts to meet the demands of the peace treaties.

2. 1924-30

The year 1924 brought two Reichstag elections. In the first one (May 4), necessitated by expiration of the mandate of the Reichstag chosen in 1920, the Social Democrats won only 100 seats (as contrasted with 173 won by the Majority Socialists alone four years previously), and, as was foreshadowed by the results of recent *Land* and municipal elections, the moderate parties lost all along the line. At one extreme, the Nationalists captured 95 seats; at the other, the Communists 62. A Social Democratic Reich president (Ebert) found himself at the curious task of planning a cabinet to be presided over by a Nationalist, and although this did not work out, the ensuing government found that it could not get on without Nationalist support, which, however, could be had only at the price of admitting Nationalists (still avowed enemies of the republican form of government) to a number of cabinet seats. With a view to overcoming the difficulty, the Reichstag was dissolved and another general election held (December 7). The moderate parties did, indeed, make some gains, and the Communists suffered some loss. The Nationalists, however, profited sufficiently to be able to remain in a key position, and early in 1925 (after an interregnum of a month during which no leader was able to form a ministry) a Centrist-People's-Nationalist coalition took office under the chancellorship of Dr. Hans Luther. Once more power

shifted to the right, for this was the first time that Nationalists had been admitted to the cabinet; and the swing presently received further emphasis from the election of Field Marshal von Hindenburg to the presidency of the Republic.

From 1925 to 1928, the most troublesome circumstance in connection with the building of swiftly rotating cabinets continued to be the imposing strength of the Nationalists; now they were out, now in, and although the major elements in the party were induced in 1927 to pledge loyalty to the Republic, a definite repudiation the next year, under Hugenberg's leadership, of all compromise with the Weimar system merely confirmed the suspicions of those who had grudgingly worked with them. A general election in May of the latter year, in which the Social Democrats recovered ground and the Nationalists fell back sharply, changed the picture for the time being and eventuated, in the spring of 1929, in a "grand coalition" in which five parties—Social Democrats, Center, Democrats, People's, and Bavarian People's—were represented in proportion to their strength in the Reichstag, with a Social Democrat once again in the chancellorship for the first time since 1920.[1] But hope that something approaching political equilibrium had at last been reached proved illusory. Within a year, economic difficulties overwhelmed the many-sided coalition; a new combination of March, 1930, representing another swing to the right because of the absence of the Social Democrats, and with the Centrist leader, Dr. Heinrich Brüning, as chancellor, fared little better; and when another Reichstag election was held in the following September, the outstanding result was amazing gains by the Communists at one extreme and still more by the National Socialists at the other, the quota of seats being raised in the one case from 54 to 76 (with a 40 per cent increase in the popular vote) and in the other from 12 to 107, on the basis of a popular vote which had mounted from 809,000 in 1928 to nearly 6,500,000. To the consternation of all moderates, the fascist party of Adolf Hitler was now outranked in the Reichstag by only the Social Democrats.[2]

[1] This chancellor, Hermann Muller, had, however, headed a temporary "ministry of personalities" organized immediately after the 1928 election

[2] A. Mendelssohn-Bartholdy, "The Political Dilemma in Germany," *For. Affairs*, July, 1930, J K Pollock, "The German Reichstag Elections of 1930," *Amer. Polit. Sci Rev*, Nov, 1930.

Party politics from 1930 onwards, to the suppression of the party system in 1933, will be dealt with in the succeeding chapter, after we shall have gone back to trace the rise and growth of National Socialism.

CHAPTER XXXVI

The Rise of Dictatorship

THE founder of National Socialism and *Führer* (leader) of the German nation was born in Braunau, Austria, on April 20, 1889. His father was a minor customs official, his mother of poor peasant stock; and his formal education stopped short with the elementary school. Left an orphan at 13, he four years later went to Vienna, meeting-place of many nationalities, religions, and languages. There, manual labor soon palled on him; and when he applied for admission to the Academy of Art, the paintings which he submitted as evidence of his proficiency were pronounced not up to the required standard. Irked by his failure, he fell to brooding upon the ills of the world in which he found himself, and parliamentarism, liberalism, socialism—most of all the political, social, and cultural activities of Jews—became objects of his intense dislike. In 1912, still hoping to study art (architecture had now become his main interest), he went to Munich, which, as a purely German city, appealed to him as a pleasanter environment than the cosmopolitan Austrian capital. Here too, however, his artistic ambitions failed of realization, and not even regular employment proved obtainable. Hence it was that when Europe was unexpectedly plunged into war two years later, he—as he tells us candidly in his autobiographical book, *Mein Kampf* ("My Struggle")—was overjoyed. As to many another economically unattached and frustrated member of the lower middle classes, war promised not only a chance to have a part in forging German greatness, but also adventure and escape from an empty, drab existence.

ADOLF HITLER

Leaving the army in 1918 with a satisfactory record, Hitler was stirred profoundly by the collapse of the old Germany and the rise of the liberal Republic, and while recovering in a hospital from gas wounds, he resolved to go into politics and lead in restoring his adopted country to its former grandeur—albeit on lines of a decidedly different philosophy from that of the recent revolution. Dis-

DECIDES TO GO INTO POLITICS

covering a band of half a dozen other war veterans who met from time to time in a small back room of a Munich café to talk politics, he joined as a seventh member and, even before the ambitious name of "National Socialist German Workers' party" was assumed, became its acknowledged leader. Shrewdly enough also, he associated himself with the *Reichswehr*, or national army, which employed him as a sort of intelligence man, with the duty of mingling in labor and other revolutionary circles and reporting what he saw and heard to army and anti-revolutionary leaders. His connections with the *Reichswehr* were never broken off. Captain Ernst Rohm, an active officer, became his most intimate friend, and was made responsible for the military organization of the party; and it was army funds that enabled Hitler later to buy the Munich newspaper, *Volkischer Beobachter*, and turn it into the official Nazi organ. From the start, too, Hitler showed remarkable gifts of oratory. He was not of the *élite*, or an intellectual, and he had literally to talk himself into the hearts of the people, first in Munich, and afterwards all over distracted Germany. But to the masses of humiliated and impoverished Germans he in time became a symbol of the unknown soldier resurrected to take up again the seemingly lost fight. Of himself, he dreamed as the leader of a strong, reborn Germany; and with dreams and intuitions and mystical appeals recalling the Fatherland's glorious past, he conquered a shattered nation.[1]

THE FAILURE OF 1923

During the first four-year period of its history, *i.e.*, to 1923, the party was hardly more than a local Bavarian affair, even though its ramifications did extend far enough afield to cause it to be banned by the authorities of seven different *Lander*. Notwithstanding steady opposition, the times were favorable for growth. Voluntary armed bands (*Freikorps*) of disgruntled ex-veterans, stirred by the cutting off of careers through limitation of the *Reichswehr* to 100,000 men by the terms of the Versailles treaty, sprang up on all sides, bent upon toppling the "weak-kneed" Republic to the ground. Political assassinations startled the world with unparalleled frequency. Early in 1923, the French and Belgians occupied the Ruhr basin (one of Germany's richest industrial areas), meeting only passive resistance from a government incapable of anything more effective. During ensuing months, the mark depreciated to a point where it was worth virtually nothing, sweeping away savings, shattering the middle class, and furnishing ideal opportunity for nationalist agitation.

[1] The essential source of information on Hitler's early life is the first half-dozen chapters of *Mein Kampf*.

Even with circumstances so favorable, the party had, as the year drew toward a close, a dues-paying membership of only 5,000. But the leader's influence had penetrated far beyond the limits of its membership, and his *Sturmabteilungen* ("Storm Troops") were already prepared to keep rigid discipline in the party and to furnish the fighting spirit requisite for organized attacks upon political opponents of all shades. Encouraged by this, and by what he construed as the ineptitude of the republican régime, Hitler now, with less than his usual astuteness, overreached himself and placed his own fortunes, if not also those of his party, in dire jeopardy. Winning to his plan General Ludendorff, the nation's foremost soldier in the World War, he, on November 9, launched at Munich a *putsch* designed to stampede the nation and bring down the Republic in collapse. The effort, however, failed miserably. The little band of "beer-hall" insurrectionists was fired upon and cowed by a *Reichswehr* detachment; and although their leader preferred escape to a revolutionist's death, he was presently apprehended and, in April, 1924, sentenced to five years' imprisonment for high treason.

FURTHER YEARS OF PREPARATION

With the party now proscribed throughout all Germany, the outlook seemed dark; many a movement, so situated, would simply have collapsed. Probably this one would have done so, too, but for a host of circumstances (to be summarized at the close of this chapter) which made the ultimate success of some undertaking of the kind practically inevitable. As it was, the leader not only was set at liberty before the close of 1924, but brought forth with him from prison the famous book which he had dictated to his secretary—*Mein Kampf*, destined to become forthwith and to remain to this day the "bible" (even if decidedly Machiavellian in tone) of the National Socialist cause.[1] During his removal from the scene, most of Hitler's followers had, against his advice, joined another extremist group, a "German People's Freedom" party; so that, with liberty regained, the leader set about organizing his own party all over again and started anew the campaign to arouse the nation at large. Of three things, the failure of the beer-hall *putsch* had convinced him: first, that it was folly to place dependence upon alliance with any other

[1] Several English editions of this work, complete or abridged, have been issued, including the abridged *My Battle* (Boston, 1933), prepared by E. T. S. Dugdale, and the unexpurgated *Mein Kampf* (New York, 1939), an English version elaborately annotated by a competent group of American scholars and published by Reynal and Hitchcock. Another complete translation was issued also in New York by Stackpole Sons in 1939. The book reached its twelfth edition in Germany as early as 1932.

party or political element; second, that the good-will, or at all events the neutrality, of the army must be secured; and third, that—as evidenced by the mild treatment accorded him for embarking upon a palpably treasonable enterprise—the Republic's leaders were both weak and cowardly. No longer, he publicly proclaimed, would he swerve from the path of legality—meaning, probably, that he did not consider that it would be necessary for him to do so. During three more years, however, the party appeared to make little headway. In the elections of 1928, it (as has been observed) could capture only 12 Reichstag seats—less than half the number won four years previously. For explanation, one must look chiefly to the improvement in economic and social conditions which the country was in this period happily experiencing. The Nazi quest for power was, of course, in no wise abandoned; and the lull was taken full advantage of to perfect organization and techniques, on lines influenced considerably by those lately developed by Mussolini in Italy. The swastika, or hooked cross (卐), was adopted as the party emblem, and the brown shirt as chief feature of the party uniform; an elaborate ritual was devised, and military organization perfected. But for any drastic and overt stroke, it was necessary to await the return of the widespread misery and despair amidst which alone the party could really thrive. The depression which descended upon the nation in 1929 at last gave unlimited scope for propagandizing an impoverished and demoralized citizenry.

THE PARTY PROGRAM: "TWENTY-FIVE POINTS"

Before going on to speak of how the Nazis finally captured power, it will be well to give some attention to what they had, by way of a program, to offer the country. Interestingly enough, the program to which the party still officially adheres, and which in 1926 was declared unalterable, dates from as far back as 1920, although of course elaborated by a great deal of later interpretation, including that supplied by Hitler himself in *Mein Kampf*. This original program came from the pen of Hitler's early adviser on economic matters, Gottfried Feder, and is commonly known as the Twenty-five Points.[1] Without enumerating the long list of "We demand's" which it contains, the outstanding planks in the platform may be summarized as follows: (1) abrogation of the treaties of Versailles and St. Germain, refutation of war guilt, restoration of the lost colonies, and reestab-

[1] Its text will be found in F. Salomon, *Die deutschen Parteiprogramme* (Leipzig and Berlin, 1926), III, 73–88, and in English translation in J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (2nd ed., Ann Arbor, Mich., 1934), 1–3, W. E. Rappard *et al*, *Source Book*, Pt. IV, 9–13, N. L. Hill and H. W. Stoke, *op. cit*, 398–401, and many other places.

lishment of full equality of Germany with all other nations; (2) unification of all Germans (including by implication those of Austria, Czechoslovakia, and other border countries) in a powerful and thoroughly nationalized "Great Germany," *i.e.*, the later "Third Reich",[1] (3) exclusion from the "German nation" of all persons not of German blood (in particular, Jews), with expulsion from the country of all non-Germans who had entered it since August 2, 1914; (4) substitution of a German common law for "materialistic" Roman law; (5) unqualified authority of a central political parliament over the entire Reich, bracketed with suppression of the existing "corrupting parliamentary system"; and (6) social and economic reforms embracing summary confiscation of all war profits, abolition of income acquired without work and of "slavery to interest," nationalization of all trusts, communalization of large department stores, prevention of speculation in land, and more adequate provisions for the care of the aged, protection of health, and education "for every hard-working and capable German." Implicit in the program, although not expressly mentioned, was the rigorous repression of communism, of Marxian socialism,[2] and of every doctrine or movement tinged with internationalism or pacifism. Many other objectives, indeed, were envisaged, or at all events were read into the document in commentaries upon it, such as *Mein Kampf*, as already indicated, and a booklet by Feder, *Hitler's Official Program and Its Fundamental Ideas*, published at London in 1934. Even so, notwithstanding startling clarity in numerous of its stipulations, vagueness remains in spots, not only because of original incongruities and contradictions, but because of new twists imparted as the Nazi campaign proceeded in different parts of the country. The fact is not unimportant, too, that, from Hitler down, National Socialist leaders and party workers have commonly been more given to emotionalism than to statesmanlike planning and discussion.[3]

[1] This term "Third Reich" was coined by Moeller van den Bruck in his *Das dritte Reich* (Hamburg, 1923), published later in English as *Germany's Third Empire* (London, 1934), and, aside from Hitler's *Mein Kampf*, the most important work in National Socialist literature. The Hohenstaufen Empire of the Middle Ages was reckoned as the "First Reich" and the Empire of Bismarck and William I as the "Second Reich."

[2] The Hitler party is indeed, by its name, a *Socialist* party. But, it is explained, its socialism is not at all the corrupt, international socialism of the Jew Marx, but a purified, Germanic socialism which seeks, to be sure, to curb abuses of capitalism, yet recognizes and upholds the right of private initiative and of private ownership and use of property.

[3] Some of the more philosophic aspects of the Nazi position will be touched upon in the next chapter.

SOURCES OF PARTY SUPPORT

There were always elements in Germany—Pan-Germans, militarists, political absolutists, anti-semites—to which one portion or another of a program like the foregoing would appeal. It is, however, inconceivable that even a party endowed with the capacity for high-pressure propaganda displayed by the National Socialists should ever have been able to capture control of the country on the strength of so nebulous and in part fantastic a program, save for one major circumstance, *i.e.*, the disillusionment and despair prevailing after the War, and reaching unprecedented depths in the depression years beginning with 1929. Conditions were bad enough at all times after 1918. But it was only when, in 1929–30, the authorities under the Weimar constitution ceased to be able to maintain tolerable living conditions for the mass of the people that the National Socialist movement began to go ahead by leaps and bounds. Urban, industrial labor, largely socialist or communist, generally held aloof, likewise the more strongly Catholic sections of the country. But, like Italian fascism, the movement captured the middle classes and rural peasantry. The impoverished but proud middle classes, especially the lower strata, were particularly susceptible for the reason that, while they had been disillusioned with respect to capitalism, and had grown positively hostile to "big business," they had no mind to suffer loss of social status—to be "proletarianized"—by slipping into the ranks of socialism or communism. Rather, they were intrigued by a revolutionary party that was anti-capitalist and anti-socialist at the same time. The anti-capitalism of the Nazis fitted in with the economic reactions of a *petite bourgeoisie*, while their anti-socialism salved the wounded honor and self-respect of a social group clinging desperately to a superior but sharply challenged status.[1] University graduates, unable to find jobs, turned to the new party hopefully; professional people, hard-pressed by Jewish competition, were attracted by its anti-semitic attitudes; struggling shop-keepers were drawn by its promise of restraints upon trusts and department stores; debt-burdened small landholders thought they saw in it a chance for relief; even large industrialists, construing the party's mildly socialistic pronouncements as mere bait for the masses, accepted and even welcomed it as a bulwark against communism and an ally against trade unionism, and came forward generously with funds. With the sentiment of nationalism burning at white heat, groups and in-

[1] On the "revolt of the middle classes," see M. Ascoli and A. Feiler, *Fascism for Whom?* (New York, 1938), 154–158.

terests normally antagonistic toward one another were caught up and carried along as by a common impulse.[1]

TROUBLED POLITICS, 1930–32

The astonishing showing of the National Socialists in the Reichstag elections of September, 1930 (107 deputies as against 12 in 1928) caused the growth of the party to be viewed for the first time as a serious threat to the Weimar system—and rightly, as it proved, since within less than two and one-half years Hitler was chancellor and Nazi dictatorship firmly installed. The stormy politics of this transitional period cannot be traced in detail here, but a few of the mileposts on the road to unfettered Nazi rule may be indicated. The results of the 1930 elections were extremely embarrassing to the Brüning government,[2] which, however, by turning to the left and attracting support from the Social Democrats (still the most numerous group in the Reichstag) contrived to remain in office until May, 1932. The Social Democrats' "toleration" of Brüning was based on the theory of the "lesser evil," being dictated by apprehension lest his downfall should enthrone the Nazis and Nationalists. Government, however, was operated almost entirely on the basis of drastic decrees issued under Article 48 (though with indirect parliamentary assent), and the chancellor's hope of pulling the country out of the financial mire and at the same time deflating the Nazi movement failed of realization. In March, 1932, Brüning was largely instrumental in bringing about the reelection of von Hindenburg to the presidency.[3] Two months later, however, the old Field Marshal, moved partly by dislike of a Brüning land-settlement program which threatened the interests of the Junker class to which the chief executive himself belonged, decided that the chancellor would have to go, and on May 31, Colonel Franz von Papen, then a nominal right-wing Centrist, and certainly a politician from whom no "bolshevist" measures were to be feared, was commissioned to form a government of "national concentration," which proved a curious combination of Nationalist partisans and men of no party at all. The move, however, failed. Angered by Brüning's dismissal, the Center withheld its support; and the Papen-Schleicher "monocle" cabinet that eventually assumed the reins was nothing more than a group of non-party aris-

[1] M S Wertheimer, "The Hitler Movement in Germany," *Foreign Policy Reports*, VI, No. 23 (Jan. 21, 1931); C J. Friedrich, "National Socialism in Germany," *Polit. Quar.*, Oct.–Dec., 1931, H. Lichtenberger, *The Third Reich* (New York, 1937).

[2] See p 709 above

[3] See p 676 above

tocrats with substantially no party following.[1] In point of fact, the country was now slipping fast in the direction of unabashed dictatorship. On the ground that elections of legislatures in Prussia and other *Lander* in recent months had shown that the Reichstag no longer represented the will of the German people, President von Hindenburg, on June 4, dissolved that body; on July 20, the Social Democratic government of Prussia was ousted and Chancellor von Papen proclaimed Reich commissioner in its stead;[2] and on July 31, following a campaign of unprecedented bitterness, a new Reichstag was elected.

HITLER BECOMES CHANCELLOR (1933)

Hitlerism now reached a new peak. Its popular vote (13,722,748) was more than double that of 1930, and the 230 seats captured represented a net gain of 123. The Social Democrats, nevertheless, won 133 seats, the Centrists and Bavarian People's party together 97; and the outcome was regarded as essentially a deadlock between the nationalist, authoritarian forces on the one hand and the forces of Weimar constitutionalism on the other.[3] Relying, as it perforce must, upon more or less passive support from the National Socialists and the Center, the Papen-Schleicher government encountered nothing but trouble; and again, on September 12, the Reichstag (which had transacted no business except of a purely formal nature) was dissolved, President von Hindenburg having in the meantime held a distasteful and long-postponed interview with Hitler in the course of which the latter made it plain that he would enter no government except as chancellor and endowed with full power. After a contest considerably less exciting than that of the previous July, a new Reichstag was chosen on November 6. Again the results were inconclusive. The National Socialists polled two million fewer votes than in July and won 35 fewer seats, the Communists made fresh gains. But the general situation was left about as before, the Papen-Schleicher government—credited with some successes in foreign affairs, but increasingly unpopular on the score of its domestic policies—continuing in office for the time being in default of any more promising arrangement. Shortly afterwards, the cabinet's position grew so hopeless that von

[1] Von Papen had in the meantime resigned from the Center and joined the Nationalists under Hugenberg. Major-General Kurt von Schleicher occupied the key position of minister of defense.

[2] J. G. Kerwin, "The German Reichstag Elections of July 31, 1932," *Amer. Polit. Sci. Rev.*, Oct., 1932. Cf. H. L. Childs, "Recent Elections in Prussia and Other German *Lander*," *ibid.*, Aug., 1932.

[3] But with the tide running ever more strongly against constitutionalism.

Hindenburg renewed discussions with Hitler, only to find that the latter still insisted on "all power or nothing." At the beginning of December, General von Schleicher, after a prolonged crisis, assumed the chancellorship, but with no better results. Planning to govern with the support of the *Reichswehr* and the trade unions—the only stable political factors remaining—he proceeded with a project for settling unemployed people on some of the large and bankrupt East Prussian estates, only to become, as had Bruning, a "bolshevik" in the eyes of von Hindenburg; and he, in his turn, had to go. On January 30, 1933, the event toward which (notwithstanding the apparent set-back in the November elections) political developments of the past two years had been moving irresistibly at last took place: Adolf Hitler was named chancellor.[1]

TOWARD DICTATORSHIP

The meaning of the event was not lost upon either the German people or the world at large. To be sure, the new cabinet consisted of Nationalists and non-party men as well as Nazis, with the last-mentioned in a decided numerical minority;[2] and among the non-Nazis was ex-Chancellor von Papen, who, along with the Nationalists, was plainly expected by President von Hindenburg to hold the Nazis in check The latter, however, occupied the key positions; they had the driving force and the popular support; and from the outset there was no room for doubt that theirs would be the power. Furthermore, there could be no two opinions as to what would happen to parliamentary government. Already, that boasted creation of the Weimar constitution was virtually dead. For three years, government had been almost entirely by executive decree, affording logical transition to that which was yet to come. The Reichstag had been elected, convened, and dissolved, but never in that period had wielded power except of a purely negative sort. And if the Nazis had any clear-cut political conviction at all, it was that parliamentarism was a failure

National Socialist dictatorship, already long on the horizon, was now assured. It did not, however, leap at once into the saddle. After all, the cabinet was a coalition, with the Nazis in a minority, there was still a Reichstag, in which, when all opposing groups were counted, majority support was still lacking, nation-wide enthusiasm remained to be whipped to a pitch that would furnish a still more

[1] So far as form was concerned, Hitler took office, it will be observed, in a perfectly constitutional manner, precisely as had Mussolini at Rome 11 years earlier The events outlined in the preceding pages are related more fully in R. L. Buell (ed.), *New Governments in Europe* (rev. ed.), 169–198

[2] Three members out of a total of 12. The three, however, soon proved themselves the driving force in the combination.

favorable psychological setting. Aside from rapid displacement of Social Democratic and other opposition officials by Nazis, accompanied by relentless measures against Communists and Jews, the means by which Nazi control was to be made an overt and complete reality was the election of a new Reichstag, and at the same time of a new Prussian diet. It was not that Hitler looked to a régime under which legislatures should rule, but rather that the majorities which he expected to win would lend sanction, at home and abroad, to the revolution now about to be consummated. Moreover, the excitement and turbulence of an electoral campaign would furnish opportunity for sweeping fresh hordes of people under the Nazi banner. With the Reichstag dissolved on February 1, in order to afford the people a chance to "express themselves concerning the newly formed government of national concentration," a contest was opened in which Nazi fury was given full vent at the expense of Social Democrats and Communists, who indeed were practically kept from carrying on any campaign at all. Numerous Socialist and Communist leaders were thrown into jail under new emergency laws annihilating the fundamental rights guaranteed by the constitution—rights, which, of course, have never been regained; the burning of the Reichstag building, blamed on Communists despite strong indications of Nazi responsibility,[1] gave the Nazis pretext also for imprisoning most Communist deputies (including their leader, Ernst Thalmann), and for instituting a reign of terror of which President von Hindenburg, if the truth he told, showed no disapproval. The elections took place on March 5; and while the working classes displayed plenty of independence by casting 7,000,000 votes for Social Democratic, and 4,800,000 for Communist, candidates, and while the Catholic parties actually increased their Reichstag representation, more than 17,000,000 votes were polled by National Socialist, and 3,100,000 by Nationalist, candidates (together, 52 per cent of the entire vote recorded), yielding the government 341 seats,[2] or a majority of the new total of 648.

DICTATORSHIP BECOMES A REALITY

The victory was not overwhelming, but it sufficed; throughout the campaign, indeed, the Nazi leaders had made it clear that they had no intention of giving up power even if they fell short of a majority. The newly elected Reichstag was convened for a single sitting at Pots-

[1] On this episode, see J. Gunther, *Inside Europe* (rev. ed., New York, 1938), 42–60, and D Reed (correspondent of the London *Times*), *The Burning of the Reichstag* (New York, 1934)

[2] National Socialists 288, Nationalists 52. The Social Democratic quota was 120 and the Communist 81.

dam, and there on March 23, it passed by a vote of 494 to 94 the famous Law to Combat the National Crisis (commonly known as the "Enabling Act"), which, so far as a rubber-stamp parliamentary measure could do it, gave the already substantially achieved dictatorship the sanction of national approbation. Give us, Hitler had said, four years (the legal period of a Reichstag) in which to wipe out the consequences of 14 years of misrule by the parties of the Weimar constitution, and then let the country sit in judgment. In answer, the obedient deputies conferred upon the "national cabinet"—in effect, upon Hitler himself—power up to April 1, 1937, to make laws, conclude treaties, adopt budgets, and indeed to do, without check or restraint, anything whatsoever, inside or outside of the constitution, except to diminish the rights of the president of the Republic or to abolish the Reichstag or Reichsrat.[1] The demand for dictatorial powers was not unlike that made upon the Italian Parliament by the newly installed Premier Mussolini in 1922, and it met with equally ready and full response. The Iron Chancellor, Bismarck, in his day wielded enormous authority, but never anything approaching that now placed in the hands of the Nazi chief.

SUPPRESSION OF RIVAL POLITICAL PARTIES

Developments in the months that followed completely destroyed the party system. At appropriate points elsewhere, mention has been (or will be) made of the further extension of control over the *Lander*, the suppression of the Reichsrat (notwithstanding the guarantee contained in the Enabling Act), the "restoration" of the civil service along Nazi lines, the confiscation of the property of Communists and other "public enemies," the emasculation of the electoral system, the suppression of the National Economic Council, the reorganization of provincial and local government, the "coordination" of the church, and sundry other matters, including the fantastic Reichstag election of November 12, 1933, and the accompanying national plebiscite on the issue of endorsing the policies of the Hitler government.[2]

[1] The five articles comprising this remarkable law will be found in J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (2nd ed.), 4, W. E. Rappard *et al*, *Source Book*, Pt. IV, 14–15, N. L. Hill and H. W. Stoke, *op. cit.*, 412–413, and R. L. Buell (ed.), *op. cit.*, 214–215.

[2] The question put to the people on this occasion was "Do you, German man, and you, German woman, agree to this policy of your national cabinet [as set forth in the electoral decree], and are you willing to declare it to be the expression of your own opinion and your own will, and to espouse it solemnly?" The question was to be answered, in the appropriate circle on the ballot, by *Ja* or *Nein*. Out of 43,525,529 votes cast, 40,583,430 were affirmative, 2,952,100 negative, and 789,999 invalid.

The election referred to was fantastic because, after the manner of national elections in Fascist Italy from 1928 until their abolition ten years later,[1] the candidates were all put forward by a single party, and this was true because in the meantime all parties except the National Socialists had been either suppressed outright or gradually squeezed out of existence. As in Italy, the supreme objective of the dictatorial régime was a "totalitarian state" (*totaler Staat*), which, whatever else it might mean, was to permit of but a single party, and after the November triumph, full power was exerted toward the attainment of this end. First of all, the Communists were outlawed and as a party annihilated.[2] Next in line of fire stood the Social Democrats. Wholesale arrests of their leaders, coupled with suppression of their newspapers, in the spring of 1933 reduced the once formidable party to impotence. In May, when Nazi troops seized the records, headquarters, and property of the trade unions, the party all but disappeared In June, the work was completed when a decree declared the party "subversive and inimical to the state and people" and entitled to "no other treatment than that accorded to the Communist party," outlawed it completely, expelled its 121 deputies from the Reichstag, announced that all of its property would presently be sequestered, and forbade meetings, publication, and every other form of activity and propaganda in its behalf. Already, in April, that portion of Stresemann's People's party which had not already deserted to the Nazi camp had voted to disband, with advice to the remnant to become National Socialists likewise. Late in June, the Nazi press bureau announced that the Nationalist leaders had decided "voluntarily" to dissolve their party, and that the Nationalist group in the Reichstag would forthwith join the Hitler party. About the same time, the State party (successor to the former Democrats) was ended by decree, on the ground that at the last elections it had pooled its interests with the Social Democrats. On one pretext or another, various minor groups were liquidated, and by the end of June only two parties remained to be "coordinated." These were the Center and its Bavarian affiliate, which held out a while precariously, but not for long, because early in July they too were "voluntarily" dissolved, their adherents being invited to joint the National Socialist party as "guest members."

On July 14, the work of coordination was capped by a decree of

[1] See p. 843 below.

[2] With characteristic irony, their Berlin offices were converted into headquarters for the Nazi police.

the national cabinet declaring the National Socialist German Workers' party "the only political party in Germany" and imposing heavy penalties upon any persons undertaking "to maintain the organization of another political party or to form a new political party." [1] "The political parties," announced Hitler proudly, "have now been finally abolished. This is an historical event of which the importance and far-reaching effects have in many cases not yet been realized by all. We must now get rid of the last remains of democracy, especially of the methods of voting and of the decisions by majority. . . . The [National Socialist] party has now become the State." [2]

A ONE-PARTY GOVERNMENT FACES THE FUTURE

Hence it was that when, in the November election referred to, an unopposed Nazi list of candidates for the Reichstag was put before the country, it received 93.5 per cent of the almost forty million votes cast. Hence it was, too, that on the same occasion 93.1 per cent of the even larger vote cast on the question of giving the Hitler policies a blanket endorsement were affirmative. Hence it was, finally, that when, one month later, the new all-Nazi Reichstag held a seven-and-one-half-minute session for the sole purpose of "electing" officers, 659 Brown Shirts rose and sat down in unison when the government's list was put to a vote, and then went obediently about their own business. Not that all Germany had gone National Socialist, or was accepting the dictatorial régime wholeheartedly and sincerely. What proportion of the people were so accepting it, however, no man knows, in Germany or out. Observers agreed that the opposition was so scattered and demoralized that, with any sort of luck, the dictatorship would probably last a good while, also that the country would certainly never go back to the Weimar system in its entirety. On the other hand, there must have been large elements, especially among the working classes, which could never give the new order more than lip-service, and other elements, besides, whose loyalty could be counted upon only so long as the régime showed promise of serving the country's national and international interests as other régimes had failed to do. The "most democratic democracy of the world" [3] had collapsed, a great party system was in ruins; an entire fabric of government had been made over.

[1] J. K. Pollock and H. J. Heneman, *op. cit.* (2nd ed.), 25–26, W. E. Rappard *et al*, *Source Book*, Pt. IV, 66.

[2] Speech to the Reich commissioners, July 6, 1933

[3] Such was Minister of the Interior David's exuberant characterization of the Weimar system when the constitution was voted in 1919

WHY THE NAZIS SUCCEEDED:

Why did the National Socialist movement, despite occasional setbacks and periods of marking time, sweep on with overpowering crescendo to eventual triumph? After Germany lost the War, the scene appeared set for the upbuilding of a new nation liberated from the domination of a narrow military class that had brought misery and humiliating defeat to a proud people. Why could not full advantage of the fresh start be taken to erect an enduring parliamentary democracy? Books will be written to answer the question, without ever coming near to exhausting the subject.[1] Certainly no complete and fully satisfying answer can be expected here. A few major factors in the ultimate explanation may, however, be indicated, including some that must already have been suggested by things said on previous pages.

1. THE DYNAMIC LEADERSHIP OF HITLER

The importance of the individual in determining the course of human events is a matter on which there are widely differing schools of thought, but probably no one would contend that Russia is what it is today solely because of Lenin, Italy because of Mussolini, or Germany because of Hitler. On the other hand, no one could argue plausibly that, so far as Germany is concerned, National Socialism could have come by its devastating conquest of the country without the skill and power of a phenomenal leader, whether Hitler or someone else. The qualities of Hitler's leadership have been commented on by numerous writers.[2] Here we may barely mention three or four of its aspects: (1) his grim determination, his indomitable energy, and his dogged persistence in the face of discouragements; (2) his mastery of flowery emotionalism in public speaking, enabling him to hold great crowds spellbound and to send away as fanatic followers thousands who wandered into his meetings out of mere curiosity; (3) his unmatched understanding and employment of propaganda as an instrument of political power; (4) the cleverness of his strategy, which, to whatever extent he was personally responsible for it, redounded invariably to his gain.

2. THE LOST WAR

Quite apart from the matter of leadership, a host of circumstances combined to create the

[1] Some, indeed, have been written already, *e g.*, T. Abel, *Why Hitler Came into Power* (New York, 1938), based on personal testimony of some 600 Germans who had joined the National Socialist party

[2] See K. Heiden, *Adolf Hitler* (New York, 1936), the standard biography; R Olden, *Hitler* (New York, 1937), J Gunther, *Inside Europe* (rev. ed, New York, 1938), 1–61, and S. Roberts, *The House that Hitler Built* (New York, 1938), 3–24.

social and political climate in which the victory of the Nazis seemed first possible, and later inevitable. One main factor was Germany's defeat in the World War. For a hundred years, Germany had been uninterruptedly victorious in arms, humbling first Napoleon, then Denmark, later Austria-Hungary, and finally France. Prussian militarism had seemed invincible. To Germans generally, and particularly to those of more nationalistic persuasion, the collapse in 1918 had come as indeed a profound shock; and it became one of the favorite propagandist procedures of the Nazis to hammer into the popular mind the notion that, after all, the German army had not really been overwhelmed in open battle, and that the war had been lost entirely because of sinister machinations of Marxists and Jews back at home. Truly enough, defeat had not been dramatized in 1918 by the Allied armies marching into Berlin, as the Prussian forces had marched into Paris in 1871; and this, combined with the fact that most of the localized destruction flowing from the conflict had taken place in France and Belgium, rather than on German soil, made great numbers of Germans susceptible to the Nazi argument that Germany had not lost the war militarily, but only economically and politically, and because of a "stab in the back"—from which the implication was clear that, once the Nazis were in the saddle and Marxists and Jews properly liquidated, German military might would become once more irresistible.

3. THE TREATY OF VERSAILLES

Another capital weapon of Nazi propaganda was the *Diktat* of Versailles, represented as not only harsh and unjustifiable in substantive provisions, but forced like a strait-jacket upon the country when temporarily powerless to resist. It did not matter that the treaty (even though unwise in some of its features) was more lenient than those which Germany had herself imposed upon prostrate Rumania in 1917 and upon Russia early in 1918. From any point of view, it was a token of defeat and disgrace; wounded pride would have made *any* treaty an object of bitter attack. Hence, when the Nazi program bracketed abrogation of the treaty with restoration of equality for Germany with all other nations, it sounded a call having tremendous pulling power.[1]

4. UNWISE RESTRICTIVE POLICIES OF THE ALLIED POWERS

Not only by dictating a humiliating treaty did the Allied Powers unwittingly contribute to Nazi success, but also by unsympathetic and inept treatment of the German nation in suc-

[1] F. Berber, *Das Diktat von Versailles* (2 vols., Essen, 1939), is a voluminous exposition of the iniquities of the treaty from a German viewpoint

ceeding years. Two examples, of many, may be cited. Whether or not the invasion of the Ruhr by French and Belgian troops in 1923 because of Germany's failure to meet her reparations obligations was justifiable, France at all events made the very great mistake of employing for the expedition colored soldiery from her African empire, profoundly outraging German susceptibilities and furnishing Hitler the talking point that the violated honor of the Fatherland could be vindicated only by a return to the old traditional standards and values of military valor. Again when, in 1931, Great Britain and France frustrated a customs union between Germany and Austria which was ardently desired in both countries, and which would have done much to bolster up the sagging prestige of the Weimar régime among the people living under it, they fanned the flames of discontent and merely postponed a settlement which seven years afterwards was achieved, on far more drastic lines, by the marching battalions of the Third Reich. With the entry of the statesmanlike Stresemann into German politics and inauguration by him of a policy of "fulfilment" toward Great Britain and France, events seemed to take a happier turn;[1] and the Locarno treaty of 1926 was hailed as the harbinger of a new spiritual and political atmosphere between the former enemies. In the long run, however, the effort at reconciliation failed, because concessions from the Allied Powers not only were meager, but—and this is even more important—came too late.

5 ECONOMIC DISASTER

Mention has already been made of economic dislocation (evidenced particularly by the weakening of the middle classes) as a condition playing directly into the hands of Nazi agitators. From wild inflation in the early twenties flowed destruction of savings; and with economic security gone, social stability began to disintegrate and new revolutionary habits of thought to get hold of former substantial and level-headed people. Although the urban proletariat as a class remained largely impervious to Nazi propaganda, plenty of individual unemployed workers, as the new depression deepened through the early thirties, deserted the Socialists and Communists and wound up as Nazi storm-troopers; while, as has been pointed out, the crushed and baffled middle class, rather than allow itself to sink socially to proletarian status, turned, perchance with misgivings, but yet hopefully, to Nazism as itself presumably pointed toward a middle course between Marxism and ultra-capitalism. The leap from some 800,000 popular votes for National Socialist candidates

[1] A Vallentin-Luchaire, *Stresemann* (London, 1931).

in 1928 to nearly 6,500,000 in 1930, and thence to upwards of 14,000,000 in 1932, can be accounted for only by black despair born of economic disaster.

6. CAPITALIZATION OF ANTI-JEWISH PREJUDICE

Rooted in the hatred for Jews which Hitler conceived during his Vienna days, violent anti-semitism has characterized the National Socialist ideology and strategy from the beginning, and capitalization of actual and potential anti-semitic prejudice becomes another major factor in Nazi success. Under the Empire, there had been a certain amount of anti-semitic feeling, confined largely to conservative and imperialist quarters. Jews, however, had not been much discriminated against except in military and naval circles, and though composing only a distinctly minor fraction of the population (about nine-tenths of one per cent by the census of 1925), had achieved an important place in industry, banking, merchandising, law, medicine, education, literature, art, and other fields of activity. Under the Weimar régime, with its emphasis upon democracy and legal equality, they had still further extended the range and vigor of their activities—sufficiently, indeed, to have stirred apprehension, particularly among people who found them too successful as business competitors, or who disliked their hold upon banking and finance, or who thought that they wielded too much control over the government. To be sure, they constituted only about three per cent of the population engaged in business, trade, and the liberal professions, and less than one-half of one per cent of the civil service; out of 79 men who sat in Reich cabinets between 1919 and 1932, fewer than a dozen were wholly or partly of Jewish descent.[1] Nevertheless, there was enough latent suspicion or open hostility toward the race to give the Nazis something to work on; and, with one of the most remarkable displays of persecuting zeal on record, they turned all of their weapons of sarcasm, innuendo, exaggeration, denunciation, and downright falsification to the purpose of making life intolerable for the Jewish population and harrying it out of the land. The Weimar Republic was a "Jew republic" (*Judenrepublik*); its founders had sold out the German people in the Versailles treaty; along with the Socialists (and large numbers of Jews *were* Socialists), they and their kind had administered the fatal "dagger thrust in the back" which had kept the German army from achieving the ultimate victory that should

[1] Of 608 persons elected to the Reichstag in 1932, only one was a Jew and only 14 of Jewish extraction.

have been the fruits of a long line of brilliant successes on the battle fields of France and Belgium. Such was the picture spread passionately and ceaselessly before the nation by Nazi writers and orators, and from all appearances with telling effect. From Hitler himself we have the Machiavellian observation that the masses in a country always "fall victims more easily to a big lie than to a small one!" [1]

7. SHORTCOMINGS OF THE REPUBLIC ITSELF:

(A) WEAKNESS IN LEADERSHIP

Despite the foregoing and other factors operating in favor of the Nazis, the Weimar régime fell, after all, more by reason of its own impotence than because of the cleverness and strength of its opponents. To begin with, it never succeeded in giving the country inspiring and commanding leadership. Chancellors, ministers, party chiefs came and went, but none capable of catching the people's imagination and stirring their enthusiasms. Such leadership, unfortunately, was forthcoming only from those whose object was the régime's destruction.

(B) FREEDOM TOO EASILY WON

Lack of popular fervor is to be explained, however, not only by mediocre leadership, but by the circumstances under which the people's freedom had originally been gained. In France and England, political liberty was won in long and heroic combat—in struggles for freedom giving rise to deep-rooted loyalties to self-government, coupled with courage and determination to defend it. Germany's tragedy lay in the fact that the old imperial order collapsed, not as a result of the surging endeavor of an embattled people, but only in consequence of its own weakness and of refusal by the military victors to make peace as long as it was left standing. In its origins, the Republic itself represented hardly more than a convenient device for meeting a "vacancy of power" flowing from the Empire's disintegration. If the same was true of the French Republic of 1870, there at least was in that case a respectable body of republican sentiment, with 80 years of effort behind it, which afforded something substantial to start with. In Germany, there had been virtually no earlier republican sentiment at all; not even the Social Democrats had ever called for the suppression of monarchy, and no one doubted that the country was almost completely monarchist at heart. The 1918 Republic therefore started off with little historical and sentimental impetus, and the new liberty, almost literally "found in the

[1] *Mein Kampf* (Reynal and Hitchcock ed.), 313.

streets," could profit from no emotional attachment born of struggle and sacrifice. In other words, the results of the "revolution" of 1918 were gained too easily, and on that account were doomed to be lost, also easily.

(c) REFORM TOO PURELY POLITICAL

Not only was the shift from the semi-absolutist political institutions of the old Reich not supported by corresponding changes in thought and action of the nation, but even the formal constitutional readjustments were not in all instances adequate or wise. For example, the architects of the new régime, including those to whom it fell to administer it in its earlier stages, proceeded on the erroneous assumption that the center and substance of a modern government is the legislative body, and were therefore satisfied with a fundamental reform of this branch of the national and state organizations, leaving the old administrative and judicial machinery virtually intact. The basic phenomenon of the state in the twentieth century, *i.e.*, the progressive and rapid development of the administrative function as the core of public action, was entirely lost upon them. The upshot was that the new order was largely sabotaged from the start by monarchist and conservative civil servants and judges,[1] and this lack of correlation between political and administrative leadership was bound finally, not only to create confusion, but to produce weakness inviting disaster.

(d) DUBIOUS EFFECTS OF PROPORTIONAL REPRESENTATION

Another serious handicap was imposed when, ignoring the experience of great democracies like the French, English, and American, the authors of the Weimar constitution, out of deference for abstract principles of political justice, thrust upon Reich and *Lander* alike an interesting but dubious scheme of proportional representation. In a country already suffering severely from the absence of basic intellectual and sentimental unity, the result could be only to render the fabric of politics even more fragile. New and extreme parties could multiply and grow with greater facility, demagogues could more easily secure a hearing; in particular, the Nazis were enabled to capture seats—notably in 1928—which under a majority system would not have fallen to them. On lower levels of government, and under conditions of political stability, there is much to be said for the proportional principle. But in the Germany of 1918-30, it contributed to the

[1] On this point, see A. C. Grzesinski, *Inside Germany* (New York, 1939). The author was police president of Berlin until the summer of 1932, and his entire book deals with the subject indicated.

ultimately fatal division of the nation into hostile camps, and to the collapse of democratic procedures by compromise.[1]

[1] One recalls in this connection Lord Balfour's observation that democratic government "presupposes a people so fundamentally at one that they can safely afford to bicker." Introduction (p. xxiv) to Bagehot's *English Constitution* (London, 1933). The view as to proportional representation expressed above is elaborated in F. A Hermens, "Proportional Representation and the Breakdown of German Democracy," *Social Research*, Nov., 1936. For an opposing opinion, consult R. Aris, "Proportional Representation in Germany," *Politica*, Sept., 1937. An excellent piece of reading on the reasons for the collapse of the Weimar régime is M. Ascoli and A. Feiler, *Fascism for Whom?*, Chap. vi.

The best general accounts of the National Socialist movement and the rise of the dictatorship are C. B Hoover, *Germany Enters the Third Reich* (New York, 1933), and K Heiden, *A History of National Socialism* (London, 1936). A good briefer treatment is H F. Armstrong, *Hitler's Reich* (New York, 1933). National Socialist ideology of the earlier period is discussed in H D. Lasswell, "The Psychology of Hitlerism," *Polit Quar*, July–Sept, 1933, and F. L. Schuman, "The Political Theory of German Fascism," *Amer Polit Sci Rev.*, Apr., 1934. On the growth of dictatorship, one may cite C. J. Friedrich, "Dictatorship in Germany?", *Foreign Affairs*, Oct., 1930, M J. Bonn, "The Political Situation in Germany," *Polit. Quar.*, Jan–Mar, 1933, M S Wertheimer, "Forces Underlying the German Revolution," *Foreign Policy Reports*, IX, No. 10 (July 19, 1933), B. Mirkine-Guetzévitch, "The Dictatorial State," *Polit Quar*, Oct.–Dec., 1933, pp. 575–586, F Neumann, "The Decay of German Democracy," *ibid*; M T Florinsky, *Fascism and National Socialism* (New York, 1936), 30–56, H. Lichtenberger, *The Third Reich* (New York, 1937), 3–55, S H Roberts, *The House that Hitler Built* (New York, 1938), 3–61, J Gunther, *Inside Europe* (New York, 1938), 1–42; and M. Ascoli and A. Feiler *Fascism For Whom?*, 131–159.

CHAPTER XXXVII

National Socialist Ideas, Organization, and Techniques

NATIONAL SOCIALISM not only claims to have evolved a new type of state based on revolutionary political and economic conceptions, in its attempt to build up a National Socialist *Weltanschauung*, or philosophy of life, determining the total outlook of man and his position in society, it challenges traditional ideas and institutions in all provinces of human thought and action. It has thus a revolutionary philosophy, in the sense that all traditional sets of values in the Western world find themselves under attack. From the National Socialist viewpoint, Christianity, conservatism, liberalism, and socialism are all conservative, because all center around a set of basic attitudes and evaluations which stem from a common European origin, and to all of them Nazism is vehemently opposed.[1]

REVOLUTIONARY CHARACTER OF NATIONAL SOCIALIST PHILOSOPHY

The core of the Nazi philosophy is its opposition to the principle of human reason as a workable guide to social action. All European cultural development, from the beginnings of Greek philosophical speculation and detached scientific inquiry to the application of rational criteria in scientific, social, and political action in the nineteenth and twentieth centuries, is challenged by a doctrine which substitutes irrationality for reason in scientific and philosophical inquiry, force for consent in the regulation of civil society, and conquest for friendly intercourse in the international community. No aspect of the varied activities of the Nazi state, whether in pursuit of domestic policy or in the conduct of foreign relations, can be understood except in the light of irrationalism as the central, focal principle of Nazi thought and action.

ITS IRRATIONALISM

[1] The three most important books presenting National Socialist philosophy are Hitler's *Mein Kampf* (see p 712, note 1 above), Moeller van den Bruck's *Germany's Third Empire* (London, 1934), and Alfred Rosenberg's *Der Mythus des zwanzigsten Jahrhunderts* (Munich, 1930; not available in English). The most comprehensive and critical account by a non-Nazi is to be found in A. Kolnai *The War Against the West* (New York, 1938).

ITS DEVOTION TO FORCE AND USE OF PROPAGANDA

Boundless courage, readiness to sacrifice even one's life, "dangerous living," force, and complete negation of universal, rational principles of human rights follow from this irrationalism. Democracy and liberalism, with their submission to the reign of reason and tamed law, have to give way to political leadership and hierarchical stratification of society in which power is naked, untamed, and irresponsible. With reason denied the capacity to contribute in a significant manner to the common welfare, force alone remains the ultimate means of resolving issues, at home or abroad; and the Nazi philosophy focuses its emphasis on emotion, bias, and fanaticism, rather than on reason and objectivity, because the former better serve a favorable attitude toward the use of force. The element of irrationalism explains also the use of propaganda as a main weapon in the struggle for power. For, whereas propaganda is, of course, by no means always the enemy of truth, it lends itself to use with peculiarly devastating effects when frankly divorced from the restraints imposed by the method of rational persuasion.[1]

THE DYNAMIC ASPECT OF NAZIISM

This exaltation of irrationalism and force makes Nazi thought and action extremely incalculable and dynamic. Nietzsche, to whom some of the major Nazi ideas are directly traceable, once said that "the German *is* not, he becomes";[2] and this phrase aptly describes the positive, developing, forceful nature of Nazi ideas and policies. The Nazi philosophers portray life as by nature an endless stream, as something that is always becoming and never is; and this attitude of mind leads to limitless aspirations in the struggle for power. There is no rationally determinable limit to expansionism. In the field of thought, the attitude expresses itself in ruthless extermination of creeds and beliefs, including the commonly accepted foundations of Western religion and morality, in the field of home politics, it finds satisfaction only if and when the last opponent is cowed and silenced; and in the field of foreign affairs, the universe is the only limit that it will recognize. The incorporation of Czechoslovakia into Germany in the spring of 1939 showed conclusively, for example, that the limit of Nazi territorial ambitions is not to be sought (as at one time was supposed) within the confines of the German-speaking world, but is fixed only by the capacity of the Reich to impose its will upon weaker states of whatsoever nationality.

[1] See pp 741–742 below

[2] "Der Deutsche selbst *ist* nicht, er *wird*" *Jenseits von Gut und Bose* (Leipzig, 1896), 210

THE MYTH OF "RACE"

The concrete symbol of irrationalism, force, and dynamic expansion is the myth of "race."[1] Denial of the universal claims of human reason leads necessarily in National Socialist thought to suppression of the notion of humanity as such. According to Nazi ideas, it is an illusion to attribute reality to humanity, and to ascribe to human beings, as such, inalienable rights and qualities derived from such reality. "Race" or "people" is the widest group concept possessing social validity. Accordingly, it is fallacious, the Nazis maintain, to think in terms of ideas and institutions (such as humanitarianism, Christianity, international law, pacifism, etc.) that transcend the boundaries of a race. To begin with, the "blood" of a social group, a race, determines its total outlook and mode of thought. No member of a race can ever embrace views that conflict with this racial foundation—his "blood"—without betraying the unity and purity of his racial group. A German, therefore, can think only "German," even in the realm of the natural sciences![2] Further, the racial myth asserts that racial consciousness and universal reason are incompatible because the foundations of racial unity are compounded of natural factors, such as blood, which no conscious effort can change. In addition, Nazism not only denies the meaningfulness of the unity of humanity, not only asserts the existence of *different* races, but also postulates the inequality of the various races.[3] Among the existing races, Nazi thought ascribes to the Nordic race the finest qualities and greatest achievements in history. All contributions of civilization—art, science, technology, indeed, all things noble and sublime—are "almost exclusively the creative product of the Aryan",[4] and among "Aryans," it is the Nordic element that has produced all really great achievements. Nazi historians therefore maintain that Greece and Rome were creations of Germanic groups

[1] The best popular presentation of the Nazi views on racism is *The Nazi Primer; Official Handbook for Schooling the Hitler Youth*, trans. by H. L. Childs (New York, 1938). See excerpts printed in *Harper's Mag*, Aug, 1938.

[2] Since 1936, a journal for the fostering of "German thinking" in mathematics has been published under the name of *Deutsche Mathematik*. See also H. A. Grunsky, *Die Freiheit des Geistes* (Hamburg, 1935).

[3] First suggested as an elaborate theory by the Frenchman, Arthur de Gobineau, in his *Essay on the Inequality of the Human Races* (Paris, 1852). A second main precursor of the Nazi race-ideology was the Germanized Englishman, Houston Stewart Chamberlain, whose *Foundations of the Nineteenth Century* (Munich, 1899) has directly influenced the intellectuals in the Hitler movement.

[4] *Mein Kampf* (Reynal and Hitchcock ed.), 397. It should be pointed out that the Nazis have adopted, for a "community of blood," the notion of "Aryan" that formerly related only to the linguistic group comprising the Indo-European languages.

that had migrated there, and even Jesus is declared to have been not of Jewish origin, but descended from either a Roman or else a German in the service of the Roman army in Palestine.

THE RACIAL BASIS OF THE STATE

The idea of race finds its political actualization in the concept of *Volk* or *Volksgemeinschaft*, *i.e.*, the people constituted as a community. However, the people, *das Volk*, is neither the total number of inhabitants of a country nor a mere political entity. Rather, it is an organic group of a superior order, composed of those who properly "belong," and endowed with its own right to live and to its own laws—a community of destiny, culture, and history. The German "people" has a basic unity compounded of the twin elements of blood and soil (*Blut und Boden*), an entity in which no non-German can have a place.[1] All non-Aryans are therefore outside the pale, and in particular Jews; and while Jews as such are defined as persons having at least three Jewish grandparents, or such as, having only two Jewish grandparents, either profess the Jewish religion or are married to a person legally considered Jewish, "non-Aryans" are defined even more rigidly as persons having at least *one* Jewish grandparent—which manifestly raises the bars against all persons of relatively immediate, even though minor, Jewish descent. In actual fact, legislation which has been enacted with a view to preserving the racial purity of the German people [2] has been aimed at Jews almost exclusively, and other racial groups belonging politically to the Reich (known as *artverwandt*, or "racially related") are on the same legal footing as Germans [3] In pursuance of the general policy of edging Jews—already deprived of most of their property and otherwise cut off from opportunities to make a living—out of the public life of a *German* body politic, a citizenship law of 1935 (supplementing a very brief measure of the previous year which, abolishing state citizenship, placed citizenship for the first time in the history of united Germany on a uniform and exclusive national basis) restricted *Reichsburgerschaft* to per-

[1] See F Poetzsch-Heffter "Von deutschen Staatsleben," *Jahrbuch des offentlichen Rechts*, XXII (1935), 39–50, and cf. H Lichtenberger, *The Third Reich*, 137–162

[2] Notably, the law of September 15, 1935, for "The Protection of German Blood and German Honor" (W E Rappard *et al*, *Source Book*, Pt IV, 80–81), which, among other things, prohibits marriages between Jews and "citizens of German or kindred stock."

[3] All peoples of color, however, are under the ban, although an anti-communist joint front of Germany and Japan (disturbed considerably by a German–U.S.S.R. non-aggression pact of August 1939) caused the Japanese to be promoted to the status of "honorary Aryans"

ons of German or kindred stock who have proved by their behavior hat they are "willing and fit" loyally to serve the German people nd Reich, and shortly afterwards a new decree relating to the ubject asserted categorically that "a Jew cannot be a Reich citizen," dding that only non-Jews may vote or hold office.[1] On similar ines, a military law of 1936 excluded Jews from all present and uture military service, and a civil service law of 1937 made them neligible for civil service employment, even those who formerly vere tolerated because of having served in the World War or by eason of being fathers or sons of persons who fell in battle in that onflict.[2]

CHIEF AND PEOPLE

Out of the concepts and principles above outlined arises the idea of the office and function of *Reichsfuhrer* ("supreme leader of the Reich")—the official title hich Hitler today bears. The ultimate function involved is that f assuring "the living unity of the *Volkstum* (or people) in race nd living space, in destiny and culture, and of developing all its ıtent forces." This notion of the Fuhrer's task can, of course, be nderstood only in the light of Nazi views concerning the nature f "the people." Basic to the matter is a sharp distinction drawn etween the people as it is (*i.e.*, the people in reality) and the people s it would be if it should conduct itself in accordance with its own w of life (*i.e.*, the true people); and only the latter, the "true eople," is to be developed and strengthened. Enthusiastically as eople and race are glorified, a profound pessimism regarding the eople's capabilities permeates Nazi thought. To be sure, the "spirit f the people" (*Volksgeist*) is the source of all creative achievements nd institutions. Nevertheless, the ideas of the "real people" (*i e*, ıe actually living members of the national community) are held ɔ be only vague thoughts which require the added inspiration of ıe Fuhrer if they are to be translated into action; and in this fashion ıe Fuhrer himself contributes to the formation of the *Volksgeist*,

[1] Text of law and decree in W. E. Rappard *et al*, *Source Book*, Pt. IV, 77–79. In proclamation of March 16, 1939, declaring Bohemia and Moravia a protectorate f the Reich, Hitler decreed that only the German inhabitants of the lands taken ver should become *Reichsburger*, all others becoming simply "subjects of the pro-ɛctorate of Bohemia and Moravia."

[2] The best source on National Socialist racism is, of course, Hitler's *Mein Kampf*; ut a clear, though frankly sympathetic, exposition will be found in C Santoro, *Hitler Germany as Seen by a Foreigner* (Berlin, 1939), Chap. v Cf. L Preuss, Racial Theory and National Socialist Political Thought," *Southwestern Soc Sci. Quar*, Sept, 1934, and F. L. Schuman, "The Political Theory of German Fascism," *Amer. Polit. Sci Rev*, Apr., 1934 (reprinted in W. E Rappard *et al*, *Source Book*, pt. IV, 183–202). Cf. D. J. Janowsky and M M. Fagen, *International Aspects of German Racial Policies* (New York, 1937)

or people's will. Indeed, the Fuhrer's contribution is the decisive one, because, as a leading German exponent of National Socialism writes, "the sentiments of the people can never impose limits upon the initiative of the Fuhrer." [1] Only the Fuhrer is held to be capable of determining in what concrete actions and institutions the eternal laws of the people's life and destiny must be expressed. The "people in reality" may "sin" against these laws, and it is then the task of the Fuhrer to represent the "true people," *i.e.*, the people as it would be and act if it knew its true duty toward its own destiny. The Nazis candidly admit that this mystical knowledge of the "true laws" of the people cannot be perpetuated in the *institution* of a Fuhrer, but is limited to a person endowed with charismatic insight, *i e.* (for the present at any rate), to Hitler. But at all events the conception of the Fuhrer's function now held quite precludes anything in the nature of popular self-government. Democracy implies the identity of rulers and ruled, whereas in the *Fuhrerstaat* only the Fuhrer is held capable of ruling, or "guiding." Opposition to the leader and assertion of individual rights and privileges as against the state are equally precluded.

THE NATIONAL SOCIALIST PARTY

1. LEGAL STATUS —RELATION OF PARTY AND STATE

One of the most difficult aspects of the Nazi régime for a foreigner (and one may suspect for many a German as well) to make out is the relationship existing between the National Socialist party and the state. The relationship is at best a curious cross between theory and fact, and Nazis themselves have taken different views of it at different stages of the régime's development Certain facts about the legal position of the party are clear enough. First, the party is the only one legally or actually in existence, and any effort to organize a different one is punishable by fine or in other ways. This at once puts it in a basically different position from any party in a democratic country. Whereas in a democracy, parties representing divergent political wills compete for power, and even after attaining it, hold it only for a time, the German National Socialist party enjoys a legal monopoly of power, and is promised it permanently. In the second place, notwithstanding Hitler's exultant assertion in 1933 that his party had now "become the state," and likewise the apparent implication of the title of a law of 1933 for "Safeguarding the Unity of Party and State," [2] the party is, in law, distinct from

[1] V Scheuner "Le droit et l'état dans la doctrine national-socialiste," *Rev. du Droit Pub et de la Sci Polit*, Jan–Mar, 1937, p 51.

[2] J K Pollock and H J. Heneman, *op cit* (2nd ed.), 26–27, W. E Rappard *et al.*, *Source Book*, Pt IV, 67–68

the state, and is supported in that position by a formidable body both of legislation and of constitutional theory; indeed, some extremer adherents would say that it not only is separate from, but also is superior to, the state. Certainly it has never been made legally an organ of the state, as has the Fascist party in Italy.[1] On the other hand, not only has the monopoly of power which it won for itself been confirmed by law, but it has been proclaimed a "corporation of public law," and, as such, given the same protection by provisions of the penal code, as to person, insignia, uniforms, and property, as the state itself; its property, for example, is tax exempt, and criticism of its officials a penal offense. More than this, it is inextricably linked to the state through extensive identification of its officials and those of the state. At the top, Hitler has been Fuhrer of the party and Fuhrer-chancellor of the Reich,[2] Rudolf Hess is Deputy Fuhrer of the party and *ex officio* minister without portfolio in the cabinet; Dr. Joseph Goebbels is national propaganda leader for the party and Minister of Propaganda in the government; Walter Darré is similarly director of the party bureau of agriculture and Minister of Agriculture. The national youth leader of the party is youth leader of the Reich, and the party leader of the Special Guard is head of the national police.[3] And the same holds on lower levels. Most of the party district leaders (*Gauleiter*) have been appointed national governors or Prussian provincial presidents for the *Lander* or provinces corresponding to their districts; and by terms of the municipal code of 1935, a party "delegate commissioner" in each commune, appointed by the Deputy Fuhrer, supervises the local government and, under responsibility to the party alone, approves the communal charter, nominates the mayor, and exercises a veto on the mayor's nomination of municipal councillors. Unofficial special courts for party members, too, have been recognized legally as judicial agencies of the state.

Small wonder, then, that we started off by saying that the relationship of party and state is a baffling matter. Recognizing that exceptions would be taken to any broad statement of the situation that might be attempted, we may none the less summarize it somewhat as follows: (1) party and state, although described by law as

[1] See p. 830 below.

[2] In July, 1939, Hitler shortened his official title from *Der Fuhrer und Reichskanzler* to simply *Der Fuhrer*. The title of chancellor, it was explained, gave him the appearance of being a functionary or politician, whereas he is rather "the beloved leader of his people."

[3] For an illuminating list of offices coordinated in this fashion, see J. K. Pollock, *op. cit.*, 65.

"inseparably connected," have not been fused or identified, and, we are told, will not be so-combined in future;[1] (2) where the same persons exercise both party and state functions, they do so in different capacities (even though in practice the line of separation is likely to grow pretty dim); (3) the two entities, party and state, together constitute the Third Reich, embracing all of its authority, exercising all of its functions, and tied together at the top in the person of the supreme figure in each, the omnipotent Fuhrer; (4) according to Hitler himself, there is a "clear fixation of the proper spheres of party and state," that of the state embracing the continuation of "the historically developed and evolved administration of state agencies within the provisions of and by means of laws," and that of the party being the education of Germans in the National Socialist *Weltanschauung*, to the end that the best National Socialists shall become "comrades" and the best party comrades shall take over the leadership of the state.[2]

2. MEMBERSHIP

Under the most recent regulations, membership in the party is open to any "respectable" German citizen 18 years of age or over, if of pure German descent and not identified with any Masonic lodge or similar organization. A membership card is received, and an oath taken before the swastika flag as follows: "I swear fidelity to my Fuhrer Adolf Hitler. I promise to respect and obey him in all things. I promise the same respect and obedience to all leaders whom he may appoint." One may leave the party voluntarily; or he may be expelled for non-payment of dues or other delinquency. Two further facts about membership are, however, to be noted. The first is that, since the party is expected to embrace the *élite* of the nation, members are received only sparingly,[2] only by decision of the party group in the locality, and (so we are assured) only after strength of character, spirit of sacrifice, and firmness of purpose have been established. A second fact is that the party contains within itself, or is the focal center for, a long list of organized units, each with its own constituency and functions. Included strictly within the party are seven organizations (*Glieder-*

[1] In a decision of 1935, the Supreme Court (*Reichsgericht*) said. "The party has not been merged with the state . It continues to exist alongside the state . . The party does not derive its function from the authority of the state." The case turned on the question of whether a party officer could be punished for misuse of a public office, and the decision was in the negative.

[2] Cited in J. K. Pollock, *op. cit.*, 67. On the general subject, see especially A. V. Boerner, "The Position of the NSDAP in the German Constitutional Order," *Amer Polit. Sci. Rev.*, Dec., 1938.

[3] Except, as will appear, in the case of the now all-inclusive Hitler Youth. See pp. 745-746 below.

ungen), all under direct leadership of Hitler or his appointees, and including chiefly (1) the Storm Troops (numbering about three-quarters of a million), commanded by Hitler himself and once constituting an active party army, although subsequently employed mainly in demonstrations and other less violent forms of party service, (2) the Special Guard (some 200,000 strong), which provides the Fuhrer's bodyguard, carries on the work of the secret police, and administers the concentration camps in which people who have incurred the régime's disfavor or suspicion are herded, and (3) the Hitler Youth (numbering around 10 millions), about which something will be said later.[1] Not included in the party proper, but listed as "affiliated groups," are eight additional organizations, of which one alone, the German Labor Front, established in 1935, has a membership running to beyond 20 millions.[2] Many who belong to these affiliated groups are not members of the National Socialist party; and the groups themselves, unlike the *Gliederungen*, are separate legal and financial entities. Nevertheless, the groups furnish important peripheral support, and indeed the Labor Front has been characterized as the "nerve center of the Nazi state."

3. PARTY ORGANIZATION:

(A) THE HIERARCHY

No one who visits the party's headquarters in Munich or the centers from which it operates also in Berlin,[3] or who merely looks through the party year-book or contemplates a diagram of the party hierarchy, will fail to agree that the reputed German genius for organization has here achieved a triumph. A competent authority indeed asserts categorically that "all in all, the National Socialist party has the most complete and elaborate organization of any political party in the world," adding that its activities are better housed, its staffs better equipped, and its financial resources more adequate than those of any similar organization.[4] The principle on which everything is grounded is that of bureaucratic leadership. At the top is the supreme leader, the Fuhrer, assisted by (1) the Deputy Fuhrer, with a large staff for supervising

[1] See pp. 745–746 below. The total number of adult, and therefore of active, members of the party is now (1939) about four millions.

[2] See pp. 795–797 below. Others of these groups comprise organizations of physicians, lawyers, teachers, technicians, welfare workers, war veterans, and public officials.

[3] Not fewer than 25 buildings in Munich, including the famous Brown House, are required for headquarters activities, and the number in Berlin is almost as large. Among party enterprises carried on from the latter city are the Hitler Youth and the Labor Front.

[4] J. K. Pollock, *op. cit.*, 60. Party funds come mainly from initiation fees, monthly dues, sale of publications, special assessments, and contributions by big industrialists.

party activities and articulating party-state affairs, (2) a party treasurer, who has charge of the party's finances and business interests, and (3) a party "cabinet," of 19 members, each heading up some particular branch of party work. Throughout the country, party agencies and activities are encountered everywhere. Thirty-eight *Gaue*, or districts,[1] have each a *Gauleiter*, or district leader, who, as has been noted, is apt to be also the national governor or financial president of his area. *Kreise*, or counties, within a district have each a *Kreisleiter*, or county leader; counties contain units known as *Ortsgruppe*, or "local groups," each with its *Leiter;* and beneath these are commonly *Zellen,* or "cells," with cell leaders, subdivided into *Blocke*, or blocks, with block leaders, and often eventually, as the lowest units, house-groups, made up of party members living in a single large apartment building. District leaders are appointed directly by the Fuhrer; county leaders also, on nomination of district leaders; local-group leaders, by district leaders on nomination of county leaders. Lines of responsibility and control run unbrokenly through the hierarchy—responsibility of each official to the one next above him, control by each over all who stand beneath. Paralleling this basic hierarchy, also, are sets of higher and lower agencies for carrying on various specialized activities of the party on functional lines, such as education, propaganda, press, and defense; and quite apart from the regular state courts is a hierarchy of party courts—in counties and districts, and with a highest court at Munich—for settling disputes between party members, hearing charges of disloyalty or other conduct unbecoming good Nazis, and expelling members found delinquent.

(B) THE PARTY CONGRESSES

Much of the work of the agencies described is routine, and even dull. But in contrast with it, the party affords the German nation, and the world, by all odds the most colorful political spectacle to be witnessed anywhere—the annual congress at Nuremberg District, and even county, congresses attract some attention and help sustain party vigor and morale. But it is the magnificently staged general congress, held each September [2]—purposely at Nuremberg as being one of the country's most historic and most purely German cities—that conveys the most vivid impression of the party's hold on the nation and of the reasons why that hold was acquired. On the wide plain surrounding the town have been constructed facilities for

[1] Including seven in the recently annexed Austria, but not any that may be created in former Czechoslovak or other newer territories

[2] Shortly before Europe was plunged into war in September, 1939, the congress scheduled to be held within a few weeks was abandoned

outdoor meetings and pageants participated in by 100,000 people or more; and plans for further development provide for a Congress Hall capable of seating 60,000, a smaller Hall of Culture for concerts and similar performances, and a stadium designed to accommodate the almost incredible number of 400,000 spectators. To what Hitler has termed "the great community festival of the nation" flock each autumn half a million or more party members and miscellaneous onlookers; and there, amid dazzling pageantry, the Fuhrer and lesser lights conduct or witness ceremonies and symbolic performances staged with consummate showmanship to stir emotion and whet party zeal. There, too, speeches are made recounting glowingly the party achievements of the year and announcing new departures in program or policy. There is, of course, no chance for deliberation or debate. That is not at all the object. Decisions have already been made when the congress meets, at all events, they will not be made by show of hands. The congress is rather a demonstration, a spectacle, conducted with psychological ends in view—for the impression of party invincibility which it may make upon not only the German people, but peoples and governments throughout the world, many of which look upon the régime disapprovingly and watch anxiously for signs of its collapse.[1]

SOME NAZI TECHNIQUES.

The party forced its way to power while still lacking majority support throughout the country. Even in the Reichstag election of March 5, 1933, its candidates could muster only 45 per cent of the total popular vote, notwithstanding that Hitler was already chancellor and campaigning by rival parties largely frustrated by Nazi terrorism. If the régime now on the threshold was ever to be grounded upon consent rather than compulsion—if, indeed, it was to fortify itself against possibility of mischance—a far larger proportion of the people must be won over to it, or at all events brought into a submissive frame of mind. And, since the Nazi objective, in any case, reached not only to the possession of all political power, but also to regimentation of the life of the German people in all of its aspects,

[1] The best brief account of the organization of the party is J. K. Pollock, *op cit*, Chap III. Some additional information will be found in F. M. Marx, *Government in the Third Reich* (2nd ed., New York, 1937), Chap III, and S. Roberts, *The House that Hitler Built*, 72–103, and H. Lichtenberger, *The Third Reich* (New York, 1937) is decidedly useful. A party year-book (*Nationalsozialistisches Jahrbuch*), published since 1926, is informing on party structure and personnel. Since 1931, the party has maintained organization also among Germans living in foreign countries, and nowadays it claims some 44 "national associations" abroad, besides a large number of seamen's groups. On this extraordinary aspect of its policies, see C. Santoro, *Hitler Germany*, 144–147, and an anonymous volume, *The German Reich and Americans of German Origin* (New York, 1938).

the architects of the new order set themselves the task of capturing control of public opinion in all of its forms and manifestations, and not only for the immediate day of conflict but for all time to come. Democratic institutions having been destroyed, attack was next to be levelled at the spirit of intellectual independence that had supported them, and indeed at every viewpoint and interest incompatible with totalitarianism. Three main lines of effort may be brought into view. (1) general propaganda, including monopoly of press, radio, and similar instrumentalities, (2) control over formal education; and (3) the training of youth outside of school hours.

1. PROPAGANDA: (A) UNDERLYING IDEAS

Hitler's *Mein Kampf* is in effect a treatise on the art of political propaganda. Writing in 1923, he tells of having become "inordinately interested" in the subject during the World War, and bitterly laments the German government's neglect, or at best inept use, of the device in the face of what he pronounces clever and effective employment of it by the Allied Powers He adds, too, that in subsequent years the middle-class parties of Germany almost completely ignored it. Placing it, however, at the very top of his own list of political weapons, he became (along with the later Nazi Minister of Propaganda, Dr. Goebbels) not only Germany's outstanding propagandist, but the world's foremost exponent of propaganda as a method of controlling opinion. He it was, furthermore, who fixed the level on which propaganda in behalf of the Nazi régime should proceed—a level, it may be added, not very flattering to a people otherwise the object of so much adulation. To begin with, it is to be carried on within the general framework of Nazi ideology, a cardinal tenet of which is that truth, justice, fairness, and similar values have no objective reality, but are only relics of a decadent liberalism. Naturally, such a concept opens the floodgates for trickery, chicanery, deception, and every sort of practice incompatible with standards of political conduct accepted in other countries, even if not always lived up to. In the second place, propaganda is to be addressed, not to the individual intellect, but to the mass mind. It must be simple, its intellectual level must be that of the least developed mind in the crowd; and the greater the crowd, the lower the level must be. It must not be deliberative—that is, it must not weigh the merits of opposing views or policies—but must present exclusively the idea or view which it is designed to advance, it must take account of the essentially "feminine" characteristics of the crowd (*e.g.*, susceptibility to sentiment); and it must concentrate upon a very few elemental points and drive these home again and again, for the

receptivity of the masses is incredibly small and their ability to forget distressingly great.[1]

(B) DEVICES EMPLOYED

Under all totalitarian régimes, propaganda presents itself in two main phases—first, the positive inculcation of ideas, and second, the repression of ideas running on contrary lines; and in Germany both functions, while of course cooperated in, in one way or another, by virtually every organ of both party and state, are vested primarily in a *Ministry of Popular Enlightenment and Propaganda*, created in 1933,[2] and presided over throughout its history by the party national propaganda leader, Dr. Joseph Goebbels. From the Foreign Office, this ministry took over the control of news and publicity abroad, from the Ministry of the Interior, jurisdiction over general publicity, press, wireless, music, drama, and films; and from the Ministry of Economics, exhibitions and advertising; and activities have been multiplied and staff increased until nowadays the ministry and its agencies form one of the largest of the administrative establishments, with its fingers "in every governmental pie." Not a newspaper or book can be published, not a play produced, not a film displayed, not a radio program given, without its approval—nor any foreign publications distributed or foreign radio programs listened to Within the ministry, indeed, all interests and activities falling under the general head of *Kultur* are correlated in a "Culture Chamber," dating also from 1933, presided over likewise by Dr. Goebbels, and federating, in reality, seven chambers representing architecture and plastic arts, theatre, music, literature, press, films, and radio. No one may create, produce, or distribute works in any of these fields unless he belongs to the appropriate chamber; and no one may belong to a chamber unless he supports the Nazi régime.[3]

[1] "Like a woman," says Hitler, "whose psychic feeling is influenced less by abstract reasoning than by an undefinable, sentimental *longing for complementary* strength, who will submit to the strong man rather than dominate the weakling, the masses love the ruler rather than the suppliant, and inwardly are far more satisfied by a doctrine that tolerates no rival than by a grant of liberal freedom, such freedom they often are at a loss to know what to do with, even feeling themselves deserted. They neither realize the impudence with which they are spiritually terrorized, nor the outrageous curtailment of their human liberties, for in no way does the illusion of this doctrine dawn on them Thus they see only the inconsiderate force, the brutality, and the aim of its manifestations, to which they finally always submit" *Mein Kampf* (Reynal and Hitchcock ed), 56

[2] Text of the law in J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (2nd ed), 28, and W. E Rappard *et al*, *Source Book*, Pt IV, 21–23.

[3] The best detailed analysis of Nazi methods and techniques of propaganda will be found in "Propaganda Techniques of German Fascism," *Propaganda Analysis* (May, 1938), and the adaptation of these Nazi methods to American conditions is described in "The Attack on Democracy" (January, 1939). Cf. F. M Marx, "State

The transformation of the once flourishing German civilization into a series of propaganda battalions has necessarily had the result of impoverishing Germany's intellectual life. Many of her outstanding scientists and men of letters, such as Albert Einstein and Thomas Mann, have been forced into exile, for there is no room left in the country today for "non-Aryan" or liberal thinkers. Out of 7,979 teachers at German universities, 1,145, or 14.3 per cent, were dismissed by April, 1936, for racial and/or political reasons.[1] The press has fared quite as badly. In four years (1933-37), the number of newspapers carrying political matter dropped from 3,607 to 2,671; and among those that disappeared were such former liberal organs as the *Berliner Tageblatt* and the *Vossische Zeitung*. The circulation of papers still in existence has dropped materially, because the radio presents the same news and no diversity of editorial interpretation is permitted. The only papers, indeed, whose circulation has increased are the *Volkischer Beobachter*, official organ of the party, and required to be subscribed to by all state and party authorities, and *Der Sturmer*, Julius Streicher's weekly gospel of hate. The latter has now the highest circulation of any paper in Germany. In the domain of literature, the country has had just one steady "best-seller" in the last six years; before the Nazis came to power, 600,000 copies of Hitler's *Mein Kampf* had been sold, and the number has now gone beyond five millions. A decree of the Ministry of the Interior dating from 1936 requires municipalities to provide newly married couples with copies of the Nazi "bible."

2 CONTROL OF FORMAL EDUCATION

The destruction of democracy in the new Reich has entirely eliminated the selection of political leaders through free competition, and the necessity of creating a new *élite* of leaders capable of replacing the naturally dwindling personnel of the present political hierarchy has led to transformation of the entire school system, from kindergarten to university, into one great training camp for faithful followers of Nazism. On all levels, the curriculum has been changed to promote the objectives of the authoritarian state. In both *gymnasium* and university, education in the classics has yielded steadily

Propaganda in Germany," in H L Childs (ed), *Propaganda and Dictatorship* (Princeton, 1936), 11–31, and C H Wilson, "Hitler, Goebbels, and the Ministry for Propaganda," *Polit Quar*, Jan–Mar., 1939 "The New German Culture" is discussed from a Nazi viewpoint in C Santoro, *Hitler Germany*, Chap xix

[1] E Y Hartshorne, *The German Universities and National Socialism* (Cambridge, Mass, 1937), 95. Cf the same author's "The German Universities and the Government," in E P Cheyney (ed), "Freedom of Inquiry and Expression," *Annals of Amer. Acad of Polit and Soc Sci*, CC (Nov., 1938).

to new emphasis on technical, physical, and military training; and the anti-intellectualist attitude of the régime has likewise lessened the traditional German emphasis on the *Geisteswissenschaften* (philosophy, history, and social sciences). The number of students admitted to universities and other institutions of higher learning has been curtailed by approximately fifty per cent,[1] the basis of admission now being not simply, or chiefly, the candidate's scholastic attainments, but, as the admission regulations frankly say, such items as whether the candidate belongs to the Storm Troops, Special Guard, or Hitler Youth, how long he has belonged, and what his activities in such organizations have been. How completely the universities have been militarized appears, further, from the almost unvarying exclusion from higher studies of persons physically incapacitated.

THE NEW UNIVERSITY CURRICULUM

Naziism, too, not only has made compulsory the study of its own history and basic principles, but has injected into the traditional educational program two new "sciences"—the "science of race" (*Rassenkunde*) and "military science" (*Wehrwissenschaft*). The first, as part of the general propaganda scheme of national self-advertisement, does not properly constitute a branch of anthropology, but rather includes everything that can be swept together with a view to substantiating the claim of German superiority and the charge of Jewish delinquency. Indeed, all sciences, including the pure sciences of physics, mathematics, and chemistry, are now "racial" sciences. "'German physics'?, one asks," writes a leading physicist. "I might rather have said Aryan physics or the physics of the Nordic species of man, physics of those who have fathomed the depths of reality, of seekers after truth, physics of the very founders of science. But it will be replied to me 'science is and remains international.' It is false. In reality, science, like every other human product, is racial and conditioned by blood."[2] Similarly, "military science" in present-day Germany is not a specialized science of war taught by and for specialists, as elsewhere, but rather a propaganda device designed to instill war-consciousness into the people, making them once more militaristic after the interlude of "pacifist-degeneration" under the Weimar Republic. Among the branches of military science taught are military chemistry, military geography, military geology, military politics, military mathematics, military physics, military psy-

[1] E. Y. Hartshorne, *op. cit.*, 73 ff.

[2] Philipp Lenard, in the preface to his *Deutsche Physik* (1936). Quoted in Hartshorne, *op. cit.*, 113. Cf. p. 732, note 2 above.

chology, military law, military economics, military surgery, military history, military pathology, and military philosophy[1] [1]

3. THE HITLER YOUTH

Although the totalitarian régime has full mastery of the system of education from primary school to university, it has been judged desirable to supplement it with outside educational facilities. To be sure, teachers and educators in service are adherents of the régime; otherwise, they would not long retain their posts. Nevertheless, it is considered that if a totalitarian discipline is to be imposed upon a "nation of poets and thinkers" (*Volk der Dichter und Denker*), as the Germans formerly liked to think of themselves, it must be done mainly by means of new machinery supplementary to the official institutions already in existence. To achieve the objective in view, there has been brought into being the most elaborate organization of its kind in the world—the all-embracing Hitler Youth (*Hitler-Jugend*).[2] Founded in 1926 by a student in Saxony, the organization was recognized 10 years later as an institution of public law, became a major constituent element in the National Socialist party, and, after crowding out numerous earlier youth associations (*e.g.*, those connected with the Protestant and Catholic churches), emerged in its present

[1] For a full account of the curricula in leading German universities today, see E. J. Gumbel, *Freie Wissenschaft* (Paris, 1938), 20 ff. The leading German treatise on the new "military science" is K. L. von Dertzen, *Grundzüge der Wehrpolitik* (Hamburg, 1938). An entirely sympathetic discussion of Nazi science and education will be found in C. Santoro, *Hitler Germany*, Chap. xviii. On general educational policies, see, in addition to the volume by Hartshorne cited, W. E. Rappard *et al*, *Source Book*, Pt. IV, 107–116, F. Wunderlich, "Education in Nazi Germany," *Social Research*, Sept., 1937, I. L. Kandel, "Education in Nazi Germany," *Annals of Amer. Acad. of Polit. and Soc. Sci.*, Nov., 1935.

As was to be expected, Nazi efforts to bring all cultural and spiritual, as well as political and economic, aspects of national life into harmony with and under control of the régime has encountered stiffer opposition in the domain of religion than in that of education, indeed, church affairs is the one point at which the régime has been seriously balked, with conflict still going on and the outcome uncertain. Totalitarianism is intolerant of any claim to independent authority, even in matters of the spirit, and in any case, the Nazi naturalistic, materialistic ideology of race, of "blood and soil," of the all-powerful state, is incapable of being reconciled with the standards and values of Christianity. Strong measures for the "coordination" (actual subjugation) of both Protestant and Catholic churches in the country, while seriously disrupting personnel and activities, have failed of their full objective, and, notwithstanding a concordat of July 20, 1933, which was supposed to have removed the Catholic question from the realm of controversy, spiritual independence has continued to be fought for by Catholic and Protestant organizations alike. On the general subject, see H. Lichtenberger, *The Third Reich*, 187–215, M. S. Wertheimer, "Religion in the Third Reich," *Foreign Policy Reports*, XI, No. 24 (Jan. 29, 1936), W. Gurian, "Hitler's Undeclared War on the Catholic Church," *Foreign Affairs*, Jan., 1938.

[2] On similar youth organizations under the dictatorships of Italy and the U. S. S. R., see pp. 831 and 884 below.

position as the only youth organization permitted by law. From 1936, it officially included "the entire German youth within the territory of the Reich." Actually, the number of members at the beginning of 1939 (about 8,000,000) was some 2,000,000 short of this total. Hitler's fiftieth birthday, April 20 of the year mentioned, was, however, supposed to be signalized by compulsory inclusion of all who previously had failed to join, bringing the effective total to 10,000,000, or the whole number of boys and girls in the Reich between the ages of 10 and 19.[1]

The objectives toward which this great mobilization of youth is directed are, of course, two-fold. One is to indoctrinate the entire rising generation and prepare it for loyal support of the régime. The other, perhaps even more important, is to train the régime's future leaders. All who are enrolled are potential members of the party, and nowadays practically all who come into the party as members in full standing have come up from the organized youth ranks. In so far as intensive and persistent training can bring it about, all emerge from their years of preparation completely disciplined, habitually obedient, and so thoroughly saturated with Nazi tenets and attitudes as to be hardly aware of the existence of any of different character. All, too, are trained to the minute on military lines. The boy of 10 is drilled in the goose-step; at 11 he is introduced to reading military maps; at 12, he receives his first lessons in sharp-shooting, at 13, he passes on to air defense; and thence through other stages, pointed toward infantry, cavalry, aviation, or navy. Girls are trained in air defense and military nursing. Government-supported "leadership schools," in which the most promising material is gathered, are held during summer vacations—some with a view primarily to training officers for the *Reichswehr*, the Storm Troops, police establishments, and the labor service; others—especially the "Hitler schools," attended by some 5,000 a year—with a view to preparation for important party and administrative posts. In workshop, in matters of public welfare, in securing admission to awards, and especially in getting into the civil service, it is always decidedly worth while to have been a member of the youth organization.[2]

[1] There are two units for boys, *i.e.*, Hitler Youth (in the stricter sense), between the ages of 14 and 18, and German Young Folk, ages 10 to 13, and two for girls, *i.e.*, League of German Girls, ages 14 to 18, and League of Young Girls, ages 10 to 13

[2] On the Hitler Youth, see H Lichtenberger, *The Third Reich*, 163–186, C Santoro, *Hitler Germany*, Chap. xvi, and for the "Official Handbook for the Schooling of the Hitler Youth," H L. Childs (trans.), *The Nazi Primer* (New York, 1938) Liberal illustrative selections from this "Primer" are presented in *Harper's Mag.*, Aug., 1938.

Graduating from the Hitler Youth, the young German normally passes into the active membership of the party, which means new duties and obligations. In any event, at the age of 19, six months of "labor service" must be rendered by men and women alike—manual labor (with camp discipline) at building roads, draining lands, or similar employment. Then, for men, two years of compulsory military service in the *Reichswehr;* and afterwards, indefinite service with the party military, either the Storm Troops or the Special Guard, with also a brief period of army service each year. At every stage of his life, a foreign observer has remarked, the German who has come through the normal course of training "marches before his *Fuhrer* in one uniform or another." [1] "About the only thing not dictated to him is the date of his death, unless indeed he fall afoul of the *Uschla* [party court] or the *Gestapo* [secret police]." [2]

[1] H. Lichtenberger, *op. cit.*, 166.

[2] An excellent piece of reading on the subject-matter of the foregoing chapter as a whole is M Ascoli and A. Feiler, *Fascism for Whom?*, 275–307

The reader may again be reminded that the chapter was in type when war broke out in September, 1939, and that therefore (like the two that follow) it deals only with pre-war developments and situations

CHAPTER XXXVIII

Government in a Totalitarian State

CONSTITUTIONS do not fare well in times of revolution or at the hands of dictators, and the Weimar instrument has been no exception. To be sure, the ponderous fundamental law of 1919 has never been repealed, and it is still possible to go into German courts and get decisions based upon some portions of it. As has already appeared, however, the instrument has been pushed aside, violated, and superseded piecemeal in such degree as to have been reduced to a sorry relic of the former free republic for which it was made. The first body blow was administered when, on January 30, 1933, Hitler was made chancellor; for although the proceeding was in form constitutional enough, the move was in plain violation of the instrument's spirit, bringing to the helm of the state, as it did, an avowed enemy of the entire constitutional order. The next heavy blow was likewise within the letter of the instrument (Article 48), taking the form of the emergency decree of February 28, 1933, suspending popular liberties—a decree, curiously, which still stands as the professedly temporary law on the subject. Then came—at the hands of a Nazi-dominated Reichstag, significantly convoked in the Potsdam of Frederick the Great and Prussian militarism—a "law" (the Enabling Act) more boldly thrusting the constitution aside and authorizing a Nazi-controlled cabinet to go to any lengths (save in two specified directions) in making new and different constitutional law—a power conferred at first for four years only (although that did not touch the principle involved), but later renewed and today basic to the entire order. Still later, institutions carefully provided for in the Weimar instrument, *e g.*, the Reichsrat and the National Economic Council, were abolished outright; and a steadily lengthening list of other overt violations could be cited. Without pursuing the theme, it may be added simply that the point was long ago reached where the Weimar document retained validity only in so far as nothing had been decreed or done contrary to it, and that *any* new National Socialist law superseded not only older ordinary, but also constitutional, law with which it

WHAT HAS BECOME OF THE WEIMAR CONSTITUTION?

was incompatible. Trouble has never been taken formally to amend the Weimar instrument. Cherishing nothing but contempt for a document looked upon as the handiwork of socialists and Jews, the Nazis have no mind to repair it and keep it alive. When questioned on the point, they merely explain that the constitution has been amended "by way of dislodgment."

CONSTITUTIONAL STATUS OF THE DICTATORSHIP

What, then, is the constitutional basis, if any, on which the Nazi régime of today reposes? Assuredly, not the Weimar instrument; nor yet any new and integrated constitutional charter, because, notwithstanding occasional hints from high sources that such a document might be drawn up, no effort of the kind, even if ever really contemplated, is known to have been made. Aside from the alleged overwhelming support of the nation, adduced by Nazis as denoting that the régime's sanction is not solely a matter of formal laws, but also one of popular will and party spirit, the basis on which the entire present order rests is the Enabling Act and some 10 or 12 other organic laws, some of them voted by the Reichstag and others not. Of course, no end of questions can be, and have been, raised concerning the validity of this series of acts. The Enabling Act itself is vulnerable, not only in that it was tantamount to an overthrow of the constitutional order existing when it was passed, but even more in that the Reichstag which voted it was able to muster the two-thirds conceded to be required for such an act only because 81 Communist and 26 Social Democratic members had been illegally excluded, to say nothing of upwards of a hundred Centrists and others who by various means were prevented from voting their true sentiments.[1] If that cardinal measure has a shaky legal basis, the same is true of the entire subsequent upbuilding of the régime, because virtually everything that was done proceeded from powers conferred in the act mentioned or on lines parallel with it. The point is interesting and not without significance, even though a revolutionary government will always, in its own eyes, have a right to be revolutionary, ignoring the norms and discarding the procedures of a régime which it has overthrown. Perhaps the only incontrovertible conclusion that can be arrived at is that the Nazi dictatorship has been throwing down ahead of it as it progressed the constitutional planks on which it proposed to walk, and that for it, if not in the eyes of other people, the result suffices to make its government "constitutional."

[1] K Loewenstein, "Dictatorship and the German Constitution, 1933–1937," *University of Chicago Law Rev.*, June, 1937, pp 541–545

THE FÜHRER AND REICH CHANCELLOR

Turning now to government as it operates on this legally dubious but empirically sufficient basis, we encounter, of course, at the outset—and at every other point as well—the one sovereign authority, the Fuhrer (and former chancellor). The fact of his supreme power is so clear and simple that a child can grasp it. The mystical concepts and phraseology with which Nazi expositors have invested it, however, would puzzle a dialectician. At an earlier point, we have sought to make as clear as may be the relationship alleged to exist between Fuhrer and *Volk*, or people,[1] and there is no necessity for elaborating the matter further. In a "leadership" state—neither a monarchy nor a democracy—the will of the people, we are told, is formulated, expressed, and carried out by the Fuhrer. "All powers of government," Minister of the Interior Frick assures us, "are concentrated in his person"; all oaths of fealty taken by office-holders in party and state are taken, not to those *institutions*, but to the Führer personally, and the reciprocal responsibility which the Fuhrer is alleged to sustain is to "the nation"—even though there are no definable channels through which such responsibility can be enforced.

The official title long borne by Hitler—Führer and Reich chancellor—acquired new meaning in 1934, on the death of President von Hindenburg. Notwithstanding that well before the chief executive's decease, he had been stripped of most of his authority (outside of supreme command of the armed forces), there had been a certain dualism between him and the chancellor. At his death, opportunity was seized to dispense with the presidential office completely—technically, to merge it with the chancellorship, and from that time the supremacy of the Fuhrer and Reich chancellor not only was a full reality, but also squared with appearances.

SOME OF HIS POWERS

Shading off as they do into ethereal functions, such as that of "bearer of the legal will of the racial community," the governmental powers of the Fuhrer[2] defy exact enumeration or classification. Many, however, are definite enough; and of these a few may here be called to mind. To begin with, as legatee of the Reich president, Hitler has all powers which the Weimar constitution conferred on that important dignitary—appointing ministers and other officials, convoking and dissolving the Reichstag, pardoning offenders, and (of largest present importance) serving as supreme head of the armed forces. In later years, the Fuhrer exalted the *Reichswehr*, or

[1] See pp. 734-735 above.

[2] As pointed out above, the term "chancellor has been dropped from the official title. See p 736, note 2.

national army, and relegated the Storm Troops, or party battalions, to a less conspicuous position; and early in 1938, by a series of spectacular moves inspired by fear lest the army bureaucracy get out of hand, he placed himself in direct personal command of the entire establishment. Another vast group of weighty powers accrue to the Fuhrer from the lengthy series of organic laws issued in pursuance of the Enabling Act of 1933. That revolutionary act of itself, in effect, made the Fuhrer, through his complete domination of the cabinet, the final arbiter of laws to be passed and constitutional changes to be introduced. Extension of full control of the Reich over the *Lander* and their subdivisions materially widened the scope of the appointing power, as also did the nationalizing of the judiciary. The whole purport of the developing system, furthermore, was such as to put the Fuhrer in complete control over the country's foreign relations. And the enumeration could be extended —not omitting the function of serving as national governor in Prussia and party agent or delegate in Munich. Mention of party suggests still another enormous area of power; for in that domain, as well as in the state, Hitler as Fuhrer holds supreme and literal command. A deputy leader there is, as we have seen, for the party.[1] For state affairs, such an assistant may eventually be appointed, although as yet Hitler keeps all of the threads tightly drawn in his own hands.[2]

MINISTERS AND DEPARTMENTS

With the triumph of the Nazis, cabinet government, in the familiar sense of the term, disappeared completely. There is still, however, a cabinet, in which heads of executive departments preponderate; and although less influential and important in a collective capacity than before, ministers in their individual capacities have rather gained than lost. Of executive departments, there have been of late 14—seven known as Reich ministries, seven others as Reich and Prussian ministries because of the consolidation of national and Prussian administration which has taken place in nearly all fields.[3] Ministries may be created, combined, reorganized, or abolished by

[1] See p. 736 above.

[2] With the country mobilized for war in August, 1939, a new Cabinet Council for the Defense of the Reich seemed likely to absorb, for the time being, some portion of the Fuhrer's personal powers.

[3] The only Prussian ministry not tied in with a corresponding Reich ministry, with a single joint minister at the head, is that of finance, and in point of fact the head of that ministry is included in the national cabinet. See p. 779 below. Reich ministries are Foreign Affairs, War, Air, Finance, Justice, Post Office, and Popular Enlightenment and Propaganda, Reich and Prussian ministries Interior, Economics, Labor, Transportation, Agriculture, Education and Science, and Church Affairs. A number of high administrative agencies and officials such as the Reich Court of Audit, the National Planning Office, the Youth Leader, and the Reichsbank, are included in no department.

simple dictate of the Führer, and ministers similarly appointed and removed; and at all times there are ministers without portfolio (four in 1938), with the Deputy-Führer (since 1937) among the number. A comprehensive civil service act of 1937 devotes an article to the status of ministers, prescribing the oath to be taken to the "Fuhrer of the German Reich and *Volk*," forbidding incumbents to have any business connection for profit or to carry on any professional occupation while in office, and tempering the severity of the Fuhrer's power of dismissal with liberal provisions for retirement pensions[1] As would be expected, the Ministry of the Interior, with wide-sweeping jurisdiction in the areas of administrative personnel, local government, police, health, and even labor, is in many respects the most important of the group.

POSITION OF THE CABINET

Collectively, the ministers (with or without portfolio) form the cabinet; although cabinet meetings are likely to be attended, in addition, by under-secretaries and other lesser officials whose jurisdictions are involved in matters to be considered. Under the old Empire, there was, as we have seen, no imperial cabinet at all; the chancellor occupied a unique, isolated, and superior position, while the ministers attended simply to the work of their several departments. While to some degree perpetuating the Bismarckian "chancellor principle," by concentrating on the chancellor sole responsibility for decisions relating to matters of broad policy, the Weimar constitution associated chancellor and ministers in a cabinet and plainly contemplated "cabinet government," even though on lines of less strict collegiality than prevail in Great Britain and France.[2] As matters worked out, the Weimar cabinet found itself in a difficult position as between the Reich president and the Reichstag, being actually dependent on the confidence of both; and the resulting confusion contributed not a little to weakening the Weimar régime in its unhappy later stages. When the Nazis came into control, all doubts and difficulties at this point disappeared. Save only that the form of a cabinet was maintained and meetings kept up, the pages of history were turned back to the imperial period—at least in the sense that responsibility to an elective legislature ceased and the chancellor once more emerged as a dignitary on a wholly different plane from that occupied by ordinary ministers. As Reich chancellor, Hitler, in point of fact, quite transcended any chancellor of imperial times, even Bismarck;

[1] J. K. Pollock and A. V. Boerner, *The German Civil Service Act* (Chicago, 1938), 40–41.

[2] See pp. 686–688 above.

because, whereas the earlier chancellor was, after all, only a superior minister, with unique status and powers under the emperor, to whom he was responsible for everything that he did, the Führer as Reich chancellor acknowledged no superior, and no responsibility except vaguely to the "nation." The Weimar relationship with the ministers, too, has yielded to the "leadership" principle, under which all pledge fidelity and obedience to the Führer personally.

CABINET ACTIVITIES —LAW-MAKING

Partly because Hitler spends relatively little time in Berlin, partly because government under the existing régime is not in the main a matter of collective deliberation and decision, the cabinet meets infrequently. Department business requiring something more than word or act of the appropriate minister becomes a matter for consultation with the Minister of the Interior, or the finance minister, the Deputy Führer, or in the most important cases the Führer himself, but rarely a subject for discussion and decision in cabinet conclave. In the domain of legislation, the cabinet functions a bit more actively, although here again much is done without convoking it, and in any event—notwithstanding the Enabling Act's plain stipulation that the laws which it contemplated should be made by "the national cabinet"—decisions are reached not so much by it as by the Führer independently and countersigned by the appropriate minister; and while decrees of the kind are very commonly issued in pursuance of an act or statute, such underlying measures have often themselves not been considered by the cabinet as a whole, and of course hardly ever by the Reichstag. In most cases, it suffices for the originators of a law merely to get the Deputy Leader's approval, to have copies circulated among the ministers, and to collect the ministerial signatures; sometimes, indeed, the proposal is not even sent to all of the ministers. Of course, a project may be important enough to be taken up with the Führer directly and personally, and he may choose to call the cabinet together to discuss it. But of one thing the proposer of a statute may be certain, namely, that even when it receives cabinet consideration, the outcome will be determined, not by show of hands, but by verdict of the Führer. Statutes naturally are in no case subject to judicial review; and while a court might conceivably hold a decree or ordinance *ultra vires*, its boldness in doing so would almost certainly have no effect other than to call forth a statute establishing the measure's full validity.

THE REICHSTAG

As will appear, Fascist Italy has dispensed altogether with popular elections, and the former Chamber of Deputies has given way to a body of persons sitting, *ex*

officiis, by virtue of positions of other sorts to which they have been appointed by Mussolini.[1] In one sense, Nazi Germany has not broken so completely with the past: an elective Reichstag still survives. In another sense, there has been a more complete break: the reconstructed Italian Parliament is in session a good deal of the time and considers hundreds of legislative projects every year, whereas in six years (between March, 1933, and the spring of 1939) the German Reichstag was convoked in all only 11 times and acted on a total of precisely five measures.[2] In still another sense, the situation in the two "axis" countries is the same: irrespective of existing parliamentary machinery and forms, legislation is planned and procured on absolutely independent lines by the "government"—in the final analysis, by *der Fuhrer* or *Il Duce*. In Germany, it has been deemed worth while to maintain the Reichstag for the appearance of "regularity" which it affords (to the uninitiated, at all events), and for the opportunities which its occasional meetings give Hitler and other higher leaders to make important speeches and in other ways to dramatize the régime. A notable illustration of the body's utility in the latter connection was afforded on April 27, 1939, when it became the sounding board for a two and one-half hour harangue by the Führer in answer to proposals in the interest of international peace previously addressed to the speaker and to Mussolini by President Franklin D. Roosevelt.[3] On the eve of the war starting in the following September, it served a similar purpose.

An Ebert or a Stresemann looking in on a Reichstag session would, however, find little to recognize. To start with, he would have to look for the gathering, not in the Reichstag building in Berlin, but in the Kroll Theater, or even in suburban Potsdam. He would find it considerably increased in numbers; for, with the old quota of one seat per 60,000 popular votes still employed, the huge turn-out at Nazi elections has run up the membership to 817.[4] To his amaze-

[1] See pp. 841, 845 below.

[2] The Law for the Reconstruction of the Reich (1934), abolishing the *Länder* legislatures and subordinating the *Lander* cabinets to the national cabinet, three measures enacted at Nuremberg in connection with the party congress of 1935, and having to do with matters of race and citizenship, and a law of 1937 renewing the Enabling Act. In a hastily convoked session of September 1, 1939, a decree annexing Danzig to the Reich was ratified

[3] See *New York Times* of the date mentioned and days following

[4] Even before the annexations of territory in 1939. A cabinet-made law of 1936 barred Jews and Jewish "mixed offspring" from voting (W. E. Rappard *et al*, *Source Book*, Pt. IV, 73), but otherwise the pressure applied by the party results in something very like compulsory voting. It goes without saying that candidates are selected solely by the party leaders; indeed, under practice introduced in 1936, the same ballot, and one not even bearing the names of candidates, but only the

ment, he would find the entire membership belonging to a single political party—the only party allowed to exist, and of course the only one nominating candidates at election time, notwithstanding that the old proportional-representation law has never been repealed. He would find only a mass meeting, convoked to rubber-stamp some major governmental plan or policy already decided upon, or merely, as on the occasion mentioned above, to shout its approval of a speech by the Fuhrer—in any event, not a deliberative body, equipped with committees and other instrumentalities for work. And he would have to time his visit with precision, because no sitting since 1933 has lasted more than a few hours and at one in 1935 all was over in a few minutes—notwithstanding that members receive pay out of the national treasury, year in and year out, at the rate of $240 a month, qualifying them as "the highest paid male chorus in the world!" [1]

THE PLEBISCITE

Students of history will recall the frequent use of the plebiscite by both the first and the third Napoleon, and will not be surprised to find the device brought into play by European autocrats of our own day. Old-time hereditary monarchs scorned such procedures, but a Napoleon, a Mussolini, a Hitler—having come up from nowhere, but nevertheless emerging at the head of a boldly challenging revolutionary régime—may well find it expedient to seize favorable moments to put dramatically to the people the question of whether they do or do not endorse what is going on, thereby imparting to the régime an appearance of popular rootage. Hitler has no use for the popular initiative, and quite as little for the referendum as a device for actual law-making, both, as known to the Weimar constitution, are nowadays extinct. A Law Concerning Referenda, dating from July, 1933, purports, however, to preserve the principle of the referendum in an "ennobled and refined" form.[2] Under it, the government may "question the people as to whether or not they approve" of a measure proposed or already enacted, the result being determined by "a majority of the valid votes cast"; and plebiscites on these lines were held, four times in all, during the first half-decade of Nazi rule. As would be ex-

magic names of Hitler and five other major party figures, is used in all constituencies (For the form of it, see *ibid*, 75) On this occasion, the number of qualified voters was 45,440,645, the number of votes cast, 44,966,499, and the number cast for the party list, 44,423,116, or 98 8 per cent of the total. The most recent election (April, 1938) yielded results generally similar

[1] Quoted in J K Pollock, *The Government of Greater Germany*, 79

[2] J K Pollock and H J Heneman, *The Hitler Decrees* (2nd ed), 42, W. E. Rappard *et al*, *Source Book*, Pt. IV, 72.

pected, the outcome in every case was an overwhelming affirmative vote, rising from 93 per cent in November, 1933, on the question of Germany's withdrawal from the League of Nations, to 99.8 per cent in April, 1938, on the issue of the annexation of Austria. Only proposals known to be highly popular are ever submitted; in addition, plenty of means of intimidation are available should opposition show signs of coming into the open. As matters stand, the question of what would happen if a vote were to go against the government is highly academic. Nevertheless, Nazi theorists have discussed it, with the conclusion reached that "even if the voting people turns against the Führer, it is he who represents the objective mission of the people. He therefore has to take no account of the opinions and trends manifesting themselves in the plebiscite. In case the people do not agree to an intended measure, it may still be carried out. In case of a measure already carried out, the opposition of the voting people will not reverse it." [1]

NAZI GOVERNMENT MAINLY A MATTER OF ADMINISTRATION

In a totalitarian state under dictatorship, legislation—at all events, so far as machinery and procedures go—is a comparatively simple affair. For Nazi Germany, what has been said in preceding pages fairly covers the ground. Administration, however, is a very different matter. Allowance once made for basic law-making by dictate from the top, government in such a régime becomes almost entirely administration, including of course the administration of justice; and most of the remainder of what we shall have to say about German government will relate to administrative organization and procedures—in the present chapter, with respect to civil service and justice, and in the following one, with regard to the liquidation of the *Länder* and the reconstruction, under centralized control, of the government of local areas.

EARLY DEVELOPMENT AND HIGH IMPORTANCE OF CIVIL SERVICE IN GERMANY

"The civil service," remarks a competent authority, "represents the most traditional aspect of German political life. In fact, an appreciation of its nature and its growth is as essential to an understanding of German political life as is an appreciation of the nature and growth of Parliament to an understanding of English political life." [2] At a time, indeed, when England was still seeking a solution of the problem

[1] E. R. Huber, *Verfassung* (Hamburg, 1937). Cf. A J Zurcher, "The Hitler Referenda," *Amer. Polit. Sci Rev.* (Feb., 1935).

[2] C. J. Friedrich, in *ibid*, Apr., 1933, p. 201.

of the relations of crown and Parliament, and France still was governed by the caprice of monarchs and the sycophancy of courtiers, the larger German states were already in the hands of intelligent energetic, and capable civil services, which, in truth, may more nearly be said to have created the states as the modern world has known them than to have been created, as mere tools, by the states themselves, as were the civil services of countries like France and England. Localism and surviving feudal pretensions gave way to centrally directed state administrations controlling coinage, revenues, and expenditures, regulating trade and industry, and even dealing with problems of education and poor relief. In Prussia especially, the civil service became the central nexus binding the various parts of the kingdom together. As much as 200 years ago, the Prussian service was being gradually professionalized by the introduction of competitive examinations as a basis of recruitment; as early as 1794, offices were forbidden to be given persons not of tested ability; and inasmuch as a thorough knowledge of law was the attainment chiefly sought in candidates, the universities early became, as they afterwards remained, the principal training grounds for government officials.[1]

CRITICISM OF BUREAUCRACY

Development on these lines was not, however, without its drawbacks, and at an early period criticism began to be directed against the bureaucratic character of the services, particularly that of Prussia. Early in the nineteenth century, Baron vom Stein (although himself, as Prussian minister-president, part of the system) wrote: "We are governed by *paid*, *book-learned*, *disinterested*, *propertyless* bureaucrats. . . . These four words contain the character of our and similar *spiritless* governmental machines· *paid*, therefore they strive after maintenance and increase of their numbers and salaries, *book-learned*, that is, they live in the printed, not the real, world, *without interests*, since they are related to no class of citizens of any consequence in the state, and are a class for themselves—the clerical caste, *propertyless*, that is, unaffected by any changes in property It may rain, or the sun may shine, taxes may rise or fall, ancient rights may be violated or left intact, the officials do not care. They receive their salary from the State Treasury and write, write in quiet corners, in their departments, within specially-built locked doors,

[1] For a thorough survey of the early civil service in the leading German state, see W. L Dorn, "The Prussian Bureaucracy in the Eighteenth Century," *Polit. Sci. Quar*, Sept, 1931, and Mar. and June, 1932.

continually, unnoticed, unpraised. And then again they educate their children for equally useful State-machines. . . . There is the ruin of our dear Fatherland: bureaucratic power and the *nullity of our citizens*."[1] Plenty of similar opinions could be cited, down through the nineteenth century, when, to be sure, Prussian administration was everywhere held up as a model of efficiency, yet in the same breath criticized for its rigidity, pedantry, and arrogance.

ASPECTS IN THE EARLY TWENTIETH CENTURY

On account of the fact that the administration of national laws was left largely to the states, the federal civil service under the Empire of 1871 was decidedly small, numbering indeed in 1913 only 19,200 persons, exclusive of "workers."[2] Civil service recruitment and regulation were, therefore, a concern mainly of the states; and to Prussia it fell, by reason of her historical primacy in developing a thoroughgoing system, as well as because of her physical and political preponderance, to fix in the main the forms and standards adhered to throughout the country. Stated briefly, the principal characteristics of the Prussian service by 1914 were as follows: (1) organization in lower and higher grades or compartments, with practically no opportunity for the employee to break through the wall separating the inferior from the superior service; (2) recruitment, chiefly from the upper and upper-middle classes of society, by examination based on a course of at least three years in law and political science at a university; (3) as preparation for appointment in the higher service, a lengthy period—in stages aggregating from three to four years—in "preparatory service," *i.e.*, as a sort of apprentice in offices of local authorities in the municipalities, "circles" (counties), and districts, (4) ultimate admission to the higher service on the basis of a rigorous final examination, oral and written; (5) appointment with guarantee of permanence so long as the appointee conducted himself properly and was efficient, and on the assumption that he would make public service a life career, (6) abstention from political activity, except voting (one may add that the civil servant was invariably expected by the government to "vote right"); (7) fairly good pay, and much social prestige for persons who, in the main, were already of the socially superior classes. Meanwhile, general civil service laws of 1873 and 1907 had made the merit system universal in the imperial service likewise.

[1] Quoted in H. Finer, *op. cit.*, II, 1211.

[2] As compared with a total of some 1,500,000 state functionaries. It will be recalled that a large part of the administrative work of the Reich was performed by officers and employees of the states.

STATUS UNDER THE WEIMAR CONSTITUTION

When the Weimar Assembly of 1919 took stock of the national situation with a view to finding what elements of the old governmental system could be salvaged, the civil service was placed high in the list. Not only did it soon become apparent that the service had nothing to fear, but nearly all of the political groups showed concern and respect for it and sought its support. As the country's most effective instrument of government and most notable contribution to the development of the science of government, it was without question to go on. Into the new constitution were written, to be sure, certain provisions designed to place the service on a more democratic basis, all citizens, "without distinction," were declared eligible for public office "in accordance with the laws and according to their capabilities and achievements," and all discriminations against women were abolished.[1] Furthermore, it was stipulated that incumbents of public positions should be "servants of the whole community and not of a party," which, however, was not construed to debar them completely from participation in politics, and supplementary legislation made it plain that they were, under no circumstances, to involve themselves in violent opposition to the state, whether by engaging in strikes or by taking part in revolutionary movements. These restrictions once laid down, however, they were given, in the constitution itself, a grant of fundamental rights under which (1) they were to be appointed for life, unless otherwise provided by law, (2) their "vested rights" were to be inviolable, (3) removals, suspensions, and transfers to posts carrying less pay were forbidden except "on the conditions and in the form provided by law," (4) a right of appeal from all disciplinary sentences was guaranteed, along with a right to inspect one's own efficiency record and to present one's side of the case before any derogatory entry was made, (5) freedom of opinion and liberty to form organizations were granted, and (6) in line with former German, and indeed all Continental, usage, the state was made to accept full responsibility for injuries done to a third person in the execution of official authority.[2]

In pursuance of these principles, civil servants under the Weimar régime were encouraged to discard their old attitude of aloofness and superiority, to cultivate broad political, economic, and social interests, and not only to give free expression to their political opinions (so long as not communistic), but to take an active part in political life. Matters did not, however, go as well as had been hoped. Large

[1] Art. 128.

[2] Arts 129–131

and influential organizations of civil servants which now sprang up rather accentuated previously existing jealousies among different groups than the reverse. Strikes of public employees, although forbidden, nevertheless occurred from time to time.[1] Democratization of the service proved more a theory than a fact, for the reason (if no other) that the conditions of admission to the upper levels were too exacting, and entailed too much expense, to be met by any except the sons of the well-to-do. Loyalty to the new political order—never too well assured—was perceptibly weakened by measures, beginning in 1924, by which, for purposes of economy, salaries were cut, employees were discharged wholesale as they might have been in private industry, and officials ostensibly protected by law were removed against their will from active service and placed on meager pensions. More and more, the service was dragged into the arena of party politics, not only by its own sometimes too ardent participation, but by interference with it on political lines launched by different parties animated by grave, although no doubt convenient, misapprehensions as to the proprieties of parliamentary government.[2]

"RESTORATION" AT THE HANDS OF THE NAZIS

It was inevitable that the civil service and the National Socialist party should clash when the latter came to power. On the one hand, the bulk of the civil servants were identified with other parties, and indeed after 1929 Hitler's party had been bracketed with the Communists as an organization with which, on account of its subversive tendencies, civil servants should have nothing to do. On the other hand, Hitler himself had carried over from early life a deep-seated prejudice against the public service; too few civil servants had found their way into the Nazi camp; [3] too many were "non-Aryans"; and in the eyes of the people who rose to control in 1933, the service was completely infected with, and indeed a main bul-

[1] F. F. Blachly and M. E. Oatman, "German Public Officers and the Right to Strike," *Amer. Polit. Sci. Rev.*, Feb., 1928.

[2] The principal accounts, in English, of the German civil service prior to its "restoration" at the hands of the Hitler government in 1933 are H. Finer, *op. cit.*, II, Chaps xxiii, xxx, and xxxiv–xxxvii, *passim*, F. F. Blachly and M. E. Oatman, *op. cit.*, especially Chaps xi, xii, xv, xvi, C. J. Friedrich, "The German and the Prussian Civil Service," in L. D. White, *The Civil Service in the Modern State*, 383–455, and F. M. Marx in L. D. White *et al.*, *Civil Service Abroad* (New York, 1936); and an excellent brief characterization is P. Kosok, *Modern Germany; A Study in Conflicting Loyalties* (Chicago, 1933), Chap viii.

[3] Statistics published in 1936 revealed that less than four per cent of all civil servants became members of the National Socialist party before Hitler attained the chancellorship.

wark of, the hated Weimar system. Taking advantage of powers conferred in the Enabling Act, the Hitler government therefore proceeded to "restore" the service. Two weighty "cabinet acts" of April 7 and June 30 (together with supplementary decrees) largely achieved the desired end. The first—a Law for the Restoration of the Professional Civil Service [1]—was made applicable to civil servants of Reich, *Lander*, and local areas alike, and envisaged removal from the service, on every level, of all members regarded by the Nazi authorities as for any reason objectionable. To be dismissed, in particular, were: (1) officials and employees who (through favoritism or other alleged looseness in the Weimar system) had entered the service since November 9, 1918, "without possessing prescribed or customary training or other qualifications for their career"; (2) officials who were not of "Aryan descent," unless they had been in the service since pre-war days or had fought in or otherwise incurred sacrifice on account of the World War; and (3) officials who, "because of their previous political activity," did not offer security that they would "exert themselves for the national [socialist] state without reservation." Under the first of the three provisions, few removals actually were made; under the second, there were numerous dismissals of Jews; under the third, a Damocles' sword was hung above the head of every civil servant not openly a supporter of the Nazi régime, and many removals, in all ranks, took place. If officials whose separation from the service was desired could not be brought into any of these categories, a further provision of the act opened a way for summarily demoting them or retiring them on pension; and many were edged out of active connection in these ways.

The second of the acts referred to—a Law Changing the Regulations in Regard to Public Officers [2]—reiterated the exclusion of "non-Aryans"; specified marriage to a person of non-Aryan descent as a further disqualification, set up a minimum age requirement of 35 for women appointed "national officials for life"; made women liable to dismissal whenever their economic status appeared to be "permanently secured because of a family income," *i.e.*, as a result of marriage; reaffirmed in more positive language the eligibility for appointment to the national service of only persons (a) having "the prescribed education or customary training" or "special qualifica-

[1] J. K. Pollock and H. J. Heneman, *op. cit.* (2nd ed.), 36–38, W. E. Rappard *et al.*, *Source Book*, Pt. IV, 25–27.

[2] J. K. Pollock and H. J. Heneman, *op. cit.* (2nd ed.), 40–41; W. E. Rappard *et al.*, *Source Book*, Pt. IV, 30–32.

tions for the office," and (b) guaranteeing that they would at all times "support the state of the National Revolution without reservation."

SOME LARGER EFFECTS

It is hardly necessary to say that the policies embodied in the foregoing regulations subjected the civil service, as known in both imperial and republican times, to profound shock. It was not simply that by a wave of the magic wand of dictatorship all national, state, and local civil services were merged into a single service, under uniform regulations, even before the *Länder* were otherwise deprived of their basic "rights."[1] More significant than this was the complete abrogation of the "neutral," *i.e.*, non-party, basis on which the several services had always been supposed to rest. Henceforth, the combined service was to be an auxiliary and agency of the National Socialist party, with every member regarding himself, on penalty of removal, as one of Hitler's "soldiers in plain clothes." To be sure, the service as a whole was expected to continue, and did continue, with many of its historic features unchanged. To be sure, too, we are told that up to the end of 1933 not more than 10 per cent of the total personnel suffered ejection. But multitudes of officers and employees who theretofore had sought to live up to the rule of neutrality suddenly found that they must at least pay lip-service to a régime of which they disapproved; fear of arbitrary removal, in a time of widespread unemployment, gripped all but the most sycophantic; distrust and uncertainty undermined efficiency and morale. Conceivably, suppression of all political parties save one might eventually ease matters for a bureaucracy long disturbed by conflicts of competing loyalties; a civil service in a one-party state might possibly attain in a new degree that stability which is essential to the frictionless functioning of the public services as instruments of government. In the meantime, however, the conversion of a service which had borne no part in creating the new political order into an army of "trustworthy and tried fighters of the national front" in support of that order, quite shattered the foundations on which the service had traditionally rested and created a situation which, whatever the ultimate outcome, could be trusted to leave its mark for generations upon German civil service ideals, methods, and procedures.

THE CIVIL SERVICE ACT OF 1937

No sooner were the measures of 1933 proclaimed than plans began to be laid for the promulgation of a new and comprehensive civil

[1] By law of January 30, 1934. See p 777 below.

service code—one which should bring together and reorient the whole body of law on the subject and in some degree dispel the demoralizing atmosphere of uncertainty and apprehension by which civil servants generally were surrounded. Delays ensued, and even after the work of drafting was started, some two years proved necessary for completion of the task. On January 26, 1937, however, a *Deutsches Beamtengesetz* (German Civil Service Law) was decreed, which in conjunction with a new National Service Disciplinary Code and a slightly later Police Officers Act, forms one of the most complete and systematic bodies of civil service law in the world.[1] Not only does it consolidate and supersede all previous law on the subject, but it applies to the entire coordinated service—"direct *Reichsbeamte*" (national officials) and "indirect *Reichsbeamte*" (*e.g.*, municipal officials) alike, all being now, of course, Reich officials—including school teachers, university professors, judges, and even persons engaged in various enterprises of only a semi-public character.

THE SERVICE TODAY: 1. PARTY BASIS

Neither in the earlier legislation nor in the new code was the inherited civil service system upset as a whole. On the contrary, large features suffered little or no change. Nevertheless, as already pointed out, the entire system was given a violent twist, not only by the complete nationalization of the service, but by the placing of it, in utterly unashamed fashion, on a basis of party and personal fidelity, as indicated in the words with which the 1937 law opens: "A civil service rooted in the German *Volk*, thoroughly imbued with the National Socialist *Weltanschauung*, which is bound in fidelity to the Fuhrer of the German Reich and *Volk*, Adolf Hitler, forms a fundamental pillar of the National Socialist state." Every German civil servant today takes, not merely the usual sort of oath to perform his duties faithfully, but a very special pledge of personal loyalty and obedience to the Fuhrer. He, further, is committed to "intercede unreservedly at all times for the National Socialist cause." He may assume any non-salaried post in the party without formality of seeking permission, and of course without sacrificing his civil service status. He must never fail to report to the higher authorities anything coming to his notice that might prove detrimental to party as well as to state. And after retire-

[1] A translation of the main act in full, with selections from the disciplinary code, will be found in J. K. Pollock and A. V. Boerner, *The German Civil Service Act* (Chicago, 1938) Cf F M Marx, "Germany's New Civil Service Act," *Amer. Polit. Sci Rev*, Oct, 1937, and H Tasse, "Civil Service Law in Germany," *Jour. of Compar Legis and Internat Law*, Nov, 1937

ment, he must guard scrupulously the secrets of party and state alike.

2. OTHER FEATURES

Nationalization of the entire service, together with capture of the whole by a single party, assuredly did violence to civil service traditions and arrangements as known to the generations of Bismarck, William II, and Ebert. As pointed out above, however, the service as an *institution*, and indeed in many of its rather fundamental aspects, goes steadily on; and consideration of the subject here may end with mention of a few further present-day features, carrying over unchanged or embodying modifications, as the case may be. (1) There is no single central personnel agency, such as a civil service commission, subject to the power of the cabinet to regulate personnel matters in so far as it chooses, and in conformity with the rather elaborate provisions of the 1937 law, each department takes care of its own personnel work. (2) Qualifications for admission to the service—citizenship, education on prescribed lines for higher and lower levels, successful passage of competitive examinations—remain as before, with the important additions of racial purity and political reliability. The exacting standards of academic training and of written and oral tests have not been let down, but only the new racial and political requirements added. (3) Security of tenure is provided by arrangements under which, after prolonged probationary service and further examinations, a man may be designated an "official for life" at the age of 27 and a woman at the age of 35. (4) Discipline—in accordance with the extraordinarily full and specific provisions of the new code on the subject—is, however, provided for, with warning, reprimand, fine, and dismissal as penalties to be imposed for a long list of offenses, including, of course, disloyalty to the party and régime in any form. For the consideration of all questions of removal, special "disciplinary courts," organized in connection with the system of administrative courts,[1] are provided, and with right of an accused official to avail himself of the sworn testimony of witnesses and experts. Appointed by the Minister of the Interior, the judges in these courts will, of course, be faithful supporters of the régime; but at least a civil servant cannot be forced out without the advantage of a hearing. There are elaborate provisions, too, under which an official, without being technically removed, may be given an inactive status, with pension. (5) Higher officials receive fixed, and fairly liberal, salaries, ranging from 24,000 Reichmarks downward; lower ones, salaries of from 1,500 Reich-

[1] See p. 768 below.

marks upward, subject to periodic advances until a prescribed maximum is reached.[1] (6) Generous retirement provisions prevail. At 62, an official may retire voluntarily;[2] at 65, retirement becomes compulsory; and disability may entail retirement at any earlier age. As in the past, retirement pensions are liberal—amounting as a rule, for a person of extended service, to as much as 75 per cent of the salary last received, and likely in any event to be supplemented with allowances for dependent children. Widows and dependent children of deceased civil servants are pensioned; and, contrary to the practice in Great Britain and the United States, employees are not required to contribute to the funds out of which pensions are paid. (7) Speaking broadly, women are admitted to the service on the same terms as men. As has always been true, however, the numbers who can meet the academic qualifications are relatively small, and the new law discriminates against women not only by allowing them certificates of life appointment only at the age of 35, but also by stipulating their removal from the service in cases in which marriage affords presumptive assurance of economic security. (8) A former voluntary organization of civil servants, known as the *Deutsches Beamtenbund*, has been replaced by a Nazi-led and controlled *Reichsbund der deutschen Beamten*, divided into sections for police, teachers, and other groups, and devoted—according to the terms of its constitution—rather more to stimulating zealous support of Nazism than to cultivating purely professional interests and techniques.[3]

NATIONAL AND STATE COURTS BEFORE 1933

It was not to be expected that Nazi centralization of administration would stop short of the courts; and here, truly enough—even though most of the former judicial machinery has survived—changes of the utmost significance have taken place. Under neither Empire nor Weimar Republic did the country, although federally organized, have two parallel systems of courts, one national and the other state, on the pattern of the United States. From 1869 onwards, there was, it is true, a *Reichsgericht*, or national supreme court, sitting at Leipzig; and under the Weimar constitution this tribunal was endowed with wide powers, including that of

[1] For salary schedules, see J. K. Pollock and A. V. Boerner, *The German Civil Service Act*, 48–54.

[2] Until June 30, 1940, at 60.

[3] A somewhat fuller discussion of the general subject will be found in J. K. Pollock, *op. cit.*, 104–112.

passing upon the constitutionality of laws enacted in the *Länder*.[1] There were, however, no other national courts, and under Empire and Republic alike justice was regularly administered in courts maintained by the states, or *Länder*, and rendering judgments only in their name. To be sure, the general form of these courts was regulated by a national law dating originally from 1879; their powers were fixed by national statutes; their procedures must conform to requirements laid down in national procedural codes, and judicial unity was further promoted by national stipulation that the judgments and orders of the courts of one state should be respected by the courts of all of the others, and by full control of the Reich over rights of appeal. Judges, however, were appointed by state authorities; the tribunals carried on their work as state organs; and in general the system preserved unmistakably the stamp of federalism.

ALL COURTS NATIONALIZED, 1934-35

All this, the Nazis brought by rapid stages to an end. By law of February 16, 1934—following by two weeks a measure liquidating the *Länder* and transferring their rights to the Reich [2]—the national Minister of Justice was empowered to take all necessary steps to bring justice completely under Reich control; and on January 31, 1935, the Reich, as declared "possessor of full judicial power," took over "the entire judicial system, with all its privileges, rights, and duties," some 65,000 state authorities and officials of justice thereupon becoming authorities and officials of the Reich.[3] Since that time, there have been no state courts whatsoever. All judges, as Reich officials, have been under supervision of the Ministry of Justice at Berlin, and all judicial processes and procedures have been subject to any kind and amount of regulation by arbitrary Nazi decree. Certain results have inevitably followed. One of them has been the "purification" of the judiciary by removal of all members unwilling to take an oath of loyalty and obedience to the Fuhrer and to conform generally, in thought and action, to the ideology of the régime. A second consequence, entailed by the first, has been the total disappearance of even the semblance of judicial independence. A third, similarly entailed, has been the rise of a situation in which, while reasonable impartiality may still be expected in the handling of cases having no political implications, decisions in cases of other sorts may equally be expected to be dictated by favoritism toward the régime, its officers, and its supporters.

[1] In point of fact, it in later years assumed power to rule on the constitutionality of national laws as well.

[2] See p. 777 below.

[3] W. E. Rappard *et al.*, *Source Book*, Pt. IV, 24

Finally may be mentioned the disappearance of judicial review, all legislation emanating from the cabinet or other national agencies is *ipso facto* valid and enforceable, and not only would any judge attempting to question its validity bring down the wrath of Berlin on his head, but, at the worst, a measure denied validity could instantly, as remarked elsewhere, be invested with that quality by a new decree.

THE ORDINARY COURTS.

Three main categories of courts are found: (1) ordinary courts, (2) administrative courts, and (3) special courts. The first two antedate the present régime, the third is a Nazi creation. The ordinary courts start with the district, or local, tribunals (*Amtsgerichte*)—1,731 in number in 1931—which exercise original jurisdiction, both civil and criminal, in minor cases. Damage suits involving less than 1,000 marks, also domestic and personal claims, are among the civil matters which they may handle, while their criminal jurisdiction covers trespass, misdemeanors, and other offenses involving a prison sentence of 10 years or less. Supervision is exercised also over a number of non-contentious matters, such as land-title registration, guardianship, and other probate business. The *Amtsgericht* has but one judge, and does not make use of a jury, except that in reaching decisions in more important criminal cases the judge is assisted by two private citizens, chosen by lot, who sit with him as lay justices (*Schoffen*), and who, at least theoretically, have equal voice with him in determining verdicts.

1. DISTRICT COURTS

2. STATE COURTS

Next above the *Amtsgerichte* are the "state courts," or *Landgerichte*[1] (159 in 1931), each composed of a president and a varying number of associate judges. Each, also, is divided into a civil and a criminal chamber. The *Landgericht* has extensive original jurisdiction in civil matters, and also hears appeals, both civil and criminal, from the inferior tribunals. For the trial of cases involving crimes of sufficiently serious nature to entail penalties of life imprisonment or death, there are special *Schwurgerichte*, or so-called "jury courts," established in connection with the *Landgerichte*. Strictly, these courts are not jury courts in the Anglo-American sense of the term, since the six jurors who assist the three professional judges act as associate lay justices, both in the conduct of the trial and in the determination of the penalty to be imposed.

[1] This designation should deceive no one; for although the name, like the court itself, harks back to earlier days, the *Landgericht* is now as truly a national court as are all of the others.

3. STATE SUPERIOR COURTS

The highest regional courts are the *Oberlandesgerichte*, of which in 1938 there were 26, each divided into civil and criminal chambers composed, according to the type of case under consideration, of three or five justices. These tribunals have original jurisdiction in criminal cases of unusual gravity, assigned to them by the *Reichsgericht*. The bulk of their work, however, consists in reviewing contested decisions of the lower courts.

4. REICH SUPREME COURT

At the apex is the *Reichsgericht*, still sitting at Leipzig, and organized elaborately in a "great senate" for civil matters and a similar branch for criminal matters, together with seven civil senates and five criminal senates. In civil matters, this supreme court reviews the decisions of the ranking courts beneath it and disposes of complaints against the refusal of the latter to entertain appeals from the *Landgerichte*. The criminal chambers review contested decisions of the *Schwurgerichte*, or jury courts. It was the *Reichsgericht*, too, which, on request of either the Reich or a *Land* government (and, by usage, of a private individual as well) decided before 1933 whether a state or national law was, in its subject-matter, consonant with the national constitution. With a bench of 91 judges, this supreme court, capping the system, is, like the Court of Cassation at Paris, an imposing judicial body.

ADMINISTRATIVE COURTS

Germany recognizes the familiar distinction between ordinary law and administrative law, and, like other Continental countries, maintains separate courts for litigation arising under the two types. There has not developed, however, any unified scheme of administrative courts comparable with that existing in France. Instead, the Reich has a number of such tribunals, dating chiefly from the imperial period and charged with handling cases of certain specified types, *e.g.*, such as arise under national railway administration, military administration, and the enforcement of the laws on social insurance; while the *Lander* have had more or less elaborate systems of their own, which, notwithstanding the loss of all autonomy by those jurisdictions, still stand and (within the limitations to be pointed out) operate as before. The Weimar constitution contemplated the creation of a *Reichsverwaltungsgericht* which should head up administrative jurisdiction somewhat as does the Council of State in France, but no such tribunal appeared. The only approach to such a court under the Weimar Republic was a series of supreme *Reich* administrative courts dealing with specific matters, such as taxation, insurance, and

transportation—comparable, in a way, to various administrative commissions in the United States. The systems in the *Lander* differed, and, as left high and dry after the *Lander* collapsed, still differ, considerably. In small areas, there has usually been only one grade of administrative courts; in larger ones, two or three grades have been found, organized as a rule in conformity with the existing arrangement of administrative divisions. In some *Lander*, the administrative courts have been distinct in personnel from the administrative service, but in the majority, such courts, even of first instance, are composed of administrative officials. Many German jurists regard the systematic unification of agencies for administrative justice as an urgent need. Especially since the liquidation of the *Lander*, the creation of a national supreme administrative court seems necessary if the new unified governmental structure of the Reich is to work smoothly. On the other hand, it should not be forgotten that the administrative courts have lost greatly in importance under the Nazi régime, because the concentration of legislative and executive powers in the hands of the Fuhrer and his cabinet has made the legality of executive decrees and acts a question that simply does not arise. What an administrative court may still decide is, not whether an executive decree was *ultra vires*, or whether an official acting under it used his discretion wisely, but only whether the act protested against by a citizen fell properly within the limits of the discretion allowed.[1]

SPECIAL COURTS

The Weimar constitution abolished military courts, and indeed went so far as to forbid "exceptional" courts of any kind. The Nazis, however, have set up special courts of many different varieties, partly in deference to sound principles of specialized jurisprudence, but certainly in part also with a view to transferring important functions from the regular courts to quasi-judicial agencies recruited from faithful partisans of the régime and peculiarly susceptible to political considerations. Thus, courts have been called into existence to deal with disputes arising among members of the same trade or profession, *e.g.*, journalists, lawyers, physicians, and artisans; "courts of social honor," each consisting of one professional judge assisted by two lay justices (*Beisitzer*), one an employer and the other an employee, have been created to handle controversies between employers and employees;[2] "hereditary health" courts (a judge and two physicians

[1] See R. E. Uhlman and H. G. Rupp, "The German System of Administrative Courts," *Ill. Law Rev.*, Mar. and Apr., 1937.

[2] See pp. 797–798 below.

as lay justices) sit privately to deal with the sterilization of persons afflicted with serious and dangerous hereditary diseases; and still other special tribunals have been introduced, so numerous and confusing as largely to nullify the judicial unification and simplification of which Nazi jurists often boast. Most important, however, among the new Nazi judicial creations is the curiously named *Volksgerichtshof*, or "People's Court." Prior to 1934, cases involving high treason were triable in the *Reichsgericht*. When, however, in the year indicated, that tribunal made bold, in the so-called "Reichstag cases," to acquit the former parliamentary chairman of the Communist party, and with him a number of foreign communists, Nazi authorities decided to set up a tribunal that would be more dependable; and the People's Court was the result. Composed of a president, two "senate presidents," six professional judges, and a number of lay judges having "special experience in fighting subversive attacks" (all appointed by Hitler), this tribunal is charged with handling all cases of "high treason, and of treason against the country"; and since "high treason" now embraces not only offenses against the fundamental existence of the Reich, but any and all activities in opposition to Nazi ideas or organizations, the court is a powerful instrumentality, supplementary to the party courts mentioned elsewhere,[1] for keeping disaffection from showing itself. As would be surmised, its procedure smacks strongly of the star chamber.

GERMAN JUDGES

As in the case of other European countries, Germany has never followed the practice of most American states in filling the benches of the ordinary courts with judges chosen by popular vote. It has been the German, as also the French, idea that service on the bench should be a life profession, prepared for by long and special training. Until 1933, all judges were appointed by the authorities of the respective *Lander*, or, in the case of the *Reichsgericht*, by the national president upon recommendation of the Reichsrat; more recently, appointment has been by national authorities only. Training and qualifications are prescribed by national law, with the various *Lander*—until 1933—increasing the requirements as they wished. As a rule, the candidate devotes three years to university study, and then undergoes a rigorous examination. If he passes, he spends a second period of three years as an apprentice, during which time he is shifted from one court to another, until, at the end, he has spent several months in every type of court below the *Reichsgericht*. This second period is

[1] See p. 739 above.

climaxed by another searching examination, after which, if successful, the assessor, as he is now called, may await appointment as a deputy judge, or (since the training for lawyers and judges is much the same) may begin the practice of law.[1] Until the rise of dictatorial government placed all established rights in jeopardy, persons who attained the goal and received judicial appointment deservedly found their future status carefully guaranteed. Appointment was for life, and one might not be retired, or even transferred, except with his own consent. Salaries might not be reduced, and every possible immunity from administrative and legislative interference was provided. With the triumph of dictatorship, both permanence of tenure and independence of status vanished. Jewish, as well as politically unreliable, judges were dismissed on the basis of the civil service law of April 7, 1933; and the disappearance of separation of powers terminated all fixity of status that remained. Today, "the judge is no longer bound to the law, but to the person of the Fuhrer who has given the law. . . . The judge is bound to the person of the Fuhrer as any other official." [2]

GERMAN LAW ATTAINS SUBSTANTIAL UNITY

Although structurally the judicial system looks quite a bit as it did before the Nazis gained power, in basis and spirit it has been modified profoundly. What about the law which the courts exist to administer? Here, although much is contemplated, changes have as yet been less extensive, partly because a system of private law permeating the entire social structure is one of the most difficult things to uproot, partly because one main task, *i.e.*, the nationalization, or unification, of law, to which the Nazis would otherwise have addressed themselves had already been largely accomplished—or at all events was in process of accomplishment—before the new régime began. Despite a certain amount of unifying influence exerted by concepts of Roman law and of natural law, the jurisdictions brought together in the North German Confederation and later Empire had each its own accumulated written law, overlaid with custom; indeed, with the possible exceptions of Saxony and Baden, no one of them had genuine unity of law even within

[1] O C Kniep, "Legal Education in Germany," *Amer. Law School Rev*, May, 1925. Judgeships are numerous—in 1931, a total of 10,095 in the three lower grades of ordinary courts

[2] A Kottgen "Von deutschen Staatsleben," *Jahrbuch des offentlichen Rechts*, XXIV, 133 On the general subject of the judiciary, see J K Pollock, *op cit*, 85–91, M Ascoli and A Feiler, *Fascism for Whom?*, 275–281, K Loewenstein, "Law in the Third Reich," *Yale Law Jour*, Mar, 1936.

its own bounds. The mighty task of whipping scores of deeply rooted and sharply differing regional or local legal systems into a single structure of national scope—a task entered upon in France by the early revolutionary assemblies and completed under Napoleon—fell in Germany largely to the Empire; and, with the aid of a constitutional amendment of 1873 conferring on the Bundesrat and Reichstag power of "general legislation as to the whole domain of civil and criminal law and of judicial procedure," it was so far achieved that a great criminal code was promulgated in 1871, codes of civil and criminal procedure in 1877, a commercial code (revising an earlier one of 1861) in 1897, and a civil code—on which scholars and jurists worked for 30 years—in 1896.[1] These and other codes were, of course, revised from time to time, and the work of readapting and liberalizing them was kept up under the Weimar Republic, notably in the preparation of an extensive new law on criminal procedure, promulgated under Nazi authority in 1933, but drafted and prepared under the preceding democratic régime.[2]

THE NAZIS AND THE LAW

Germany, therefore, came to its period of Nazi rule with a substantially unified system of law; at all events, no such revolutionary changes were entailed as in the domains of public (including judicial) administration and economic life. This does not mean, however, that the Nazis were satisfied with the law as it stood. Quite to the contrary, they have made an overhauling of the law one of their major objectives. Wherever complete unity and uniformity still are lacking, they would see them introduced, in conformity with the supreme Nazi principle of unity of command.[3] But the major point on which they have laid emphasis is the *Germanizing* of the law, and what they have in mind here—although their incantations are often vague and meaningless enough—is the "purification" of the law

[1] Taking effect in 1900, this civil code ranks with the French *Code civil* as one of the foremost attempts in modern times to set forth in organized form the principles and rules of the civil law of a nation. See "German Civil Code," by J. W. Hedeman, in *Encyc. of the Social Sciences*, VI, 634–636. An excellent English translation is to be found in C. H. Wang, *The German Civil Code* (London, 1907), and an elaborate commentary in E. J. Schuster, *Principles of the German Civil Law* (Oxford, 1907).

[2] On German law, in general, before 1933, see F. K. Kruger, *Government and Politics of Germany*, Chap. xvi; W. Simons, "One Hundred Years of German Law," in A. Reppy (ed.), *Law; A Century of Progress, 1835–1935* (New York, 1937), I, 83–103, and F. Dĺak and M. Rheinstein, "The Development of French and German Law," *Georgetown Law Jour.*, Mar., 1936.

[3] One wonders, however, whether existing differences of legal status between party members and non-party members, as well as between members of different social classes, are really intended to disappear.

CHAPTER XXXIX

Further Aspects of German Totalitarianism: Regional and Local Government

TO THE present point, only scattered allusions have been made to a Nazi transformation in Germany quite as important as, and likely to prove more enduring than, the displacement of parliamentary government—namely, the suppression of all survivals of federalism, the consolidation of the country throughout its length and breadth under a strictly unitary government, and the eradication of all preexisting local self-rule. To this extraordinary development, contributing heavily to the general refashioning of the political scene, we now turn.

THE SHIFT TO UNITARY, CONSOLIDATED GOVERNMENT:

1. CENTRALIZING TENDENCIES BEFORE 1932

At the outset, it is but fair to observe that the scheme of Reich-*Länder* relations introduced by the Weimar constitution proved only moderately successful. In 1919, much support had appeared for converting the states into mere administrative divisions and adopting for the country as a whole a strictly unitary system. Federal interests and traditions, however, could not be overborne in favor of a change so drastic, and the states, as distinct political entities with governments of their own, passed over into the new régime, even though, because of transfers of power to the Reich, surviving as hardly better than pale images of their former selves. As often happens with compromises, the outcome was unsatisfactory; whatever might have ensued under more normal circumstances, under the social and economic stresses of the post-war period, serious difficulties developed Some of the *Lander* proved financially unable to carry their local burdens; some showed incompetency (at least grave lack of success) in managing their affairs generally; all were prone to look to Berlin for whatever encouragement and assistance they could get, duplications of effort and responsibility as between Reich and *Lander* (notably in the case of Prussia) added to the all too prevalent waste and confusion. Particularistic sentiment, to be sure, continued strong in *Lander* like Bavaria, Baden, and Wurttemberg. Nevertheless, the general tend-

ency was—as had been true in imperial times—toward unification and centralization. The national government reached out steadily for more control on both legislative and administrative lines, and long before the Nazis captured power opinion was general that Reich-*Lander* relations would, sooner or later, have to be overhauled. A school of "federalists," centering in Bavaria, favored restoring the states to something like their old constitutional position —in other words, going "back to Bismarck." But stronger and more numerous elements looked in the opposite direction, toward greater unification, if not the suppression of the *Lander* entirely. As early as 1928, the national cabinet convoked a conference of state representatives expressly to consider the problem; and while no immediate results followed, the meeting went on record to the effect that a "fundamental reform" was necessary, and evidenced genuine support (save in the case of the south German states) for plans under which the diets of the *Lander* should be abolished, the administration of Prussia merged with that of the Reich, and the remaining *Lander* replaced by new and purely administrative areas arranged by the central government. Many ends were in view, although stress was placed especially on economies to be achieved by doing away with governmental duplication, particularly as between the Reich and Prussia.[1]

2 NATIONAL CONTROL EXTENDED OVER PRUSSIA, 1932–33

The remarkable shift of opinion evidenced by the foregoing developments is worth bearing in mind as we approach the drastic measures of 1932–33 relative to the status of the *Lander*, the significant thing being that not so long ago, Social Democrats and other moderate elements represented in the 1928 conference were prepared to go almost, if not quite, as far in obliterating the *Lander* as the Nazi government has gone in more recent times. The first overt steps in the now historic process of national consolidation were taken, indeed, in the summer of 1932, six months before Hitler became chancellor. In all parts of the country, but especially at Berlin and throughout Prussia, the National Socialist movement was now producing grave disorder. Hitlerites and Communists were clashing whenever they met, and the Social Democratic government of Premier Otto Braun in Prussia was accused of being both unwilling and unable to deal adequately with the situation. Spurred by Reich Chancellor von Papen, and acting on the basis of Article 48 of the national constitution, President von

[1] F F Blachly and M E Oatman, *op. cit*, 25–27, R. H Wells, "Reichsreform and Prussian Verwaltungsreform in 1932," *Amer. Polit. Sci Rev*, Apr., 1933.

Hindenburg, on July 20, 1932, issued a decree ousting the Prussian cabinet and transferring its functions to the Reich chancellor in the capacity of "national commissioner." Contending that they were not guilty of any dereliction, and that public safety and order were, after all, not seriously endangered, the ministers brought suit in the Supreme Court at Leipzig to recover their offices. The most that they got out of the proceeding was, however, a ruling that the action taken was constitutionally valid only as a temporary measure, and that it was to be construed as applying only to their functions of a purely administrative nature. Assurance had been given, not only that no general supplanting of the *Land* governments was intended, but that the special régime in Prussia would be terminated as soon as conditions justified. In point of fact, however, no such action was ever taken. On the contrary, even before Hitler's accession to the chancellorship (January, 1933), all opponents were swept from office and plans laid for effective absorption of the *Land* into the Reich. After Hitler came to power, von Papen, as ex-chancellor, was reappointed national commissioner, with increased authority; a new type of advisory council of state was created; provincial administration was reorganized; the administration of Greater Berlin was consolidated under a "state commissioner" appointed by the Reich Minister of the Interior; the state police was brought under national control; and the diet was prevailed upon to vote its own suspension until 1937. By midsummer of 1933, little remained of Prussia's former rights of self-government.

3. NATIONAL CONTROL EXTENDED OVER OTHER LANDER—"NATIONAL GOVERNORS" INTRODUCED

Because of its size and importance, and because Berlin was its capital, Prussia was thereafter dealt with, as a rule, in special acts applying only to that area. But the rest of the *Lander* came in for treatment no less drastic, and with similar objectives in mind. In March, 1933, national commissioners were dispatched to take over all police power in Bavaria, Baden, and such other *Lander* as were not already, as a result of local elections, under purely Nazi governments or coalition governments dominated by Nazis; and in the following month, the professedly temporary régime of national commissioners was replaced by a system of "national governors" having every appearance of being designed to be permanent, and generally construed at the time as marking the end of whatever autonomy remained. Appointed by the Reich president (so long as one remained), on proposal of the chancellor, from among residents of their respective

supplementary decree of three days later, it, however, permanently abolished the *Land* diets or legislatures, transferred the "sovereign rights" of the *Länder* to the Reich, subordinated the *Land* cabinets to the Reich cabinet, placed the national governors under the supervision of the Reich Minister of the Interior, and authorized *Land* officials to go on exercising the transferred rights only "in the place of and in the name of the Reich," and only in so far as the Reich should not choose itself to make "general or specific" use of them, and, the *Land* governments formerly represented in the Reichsrat having thus been reduced to hollow shells, that body was itself abolished two weeks later.[1]

PRESENT POSITION OF THE "LANDER"

What, then, is left of the *Länder* today? Not a great deal—but more than will remain when Nazi plans shall have been fully consummated. First, the *Länder*, in general, retain their names, boundaries (in most cases), colors, and insignia—in short, their physical and ceremonial identities. However, these things are not secure, and certainly not guaranteed for long. Looming ahead in Nazi plans as now standing is a total reconstruction of the political geography of the Reich, on a basis of new regional areas laid out on economic or other "rational" lines, and with no regard for historic boundaries whatsoever. Thus far, tenacious federal traditions and other practical obstacles have prevented much progress being made in the direction contemplated. But a "little Reich reform" of 1937 which (1) wiped from the map the time-honored free city of Lübeck, consolidating it with Prussia, and (2) rearranged the boundaries of another former city-state, Hamburg, and divested it of statehood,[2] stands as a reminder of what may be expected if and when conditions come to be regarded as ripe.

In the second place, the *Länder* still have "governments"—not diets, to be sure, but at least cabinets, or groups of ministers. In some cases, *e.g.*, in Prussia, there is a minister-president as nominal head, in others, there is no such official. But in any event there is a recognizable mechanism of administration, potentially also of legislation, in each surviving *Land*. These governments, however, have absolutely no genuine independence. In the first place, all of their members are appointed, instructed, and dismissed by Hitler. In the second place, if they make laws, it is only as agents of the Reich acting by delegated authority, and because the Reich cabinet is willing that measures be decreed in this manner rather than by direct action from

[1] J. K. Pollock and H. J. Heneman, *op. cit.* (2nd ed.), 27.
[2] G. Krebs, "A Step toward *Reichsreform* in Germany," *Amer. Polit. Sci. Rev.*, June, 1938.

the Prussian *Oberpràsidenten*, or supervisors of administration in the provinces, formerly were responsible to the *Land* government for the proper execution of Prussian laws in the respective areas, since 1934 all have been agents of the Reich government instead, subject to instruction by and answerable only to Reich ministers.[1] Prussia, like most of the other *Lander*, still exists as an administrative area, but its government is only an integral part of the government of the Reich—far more truly so, as has been indicated, than under the law and practice of the Bismarckian constitution.[2]

LOCAL GOVERNMENT:

It was to be expected that, once the *Lander* had been stripped of their modest political prerogatives and reduced to mere administrative areas serving the convenience of the Reich, local government would in its turn feel the withering touch of authoritarianism Taking the long view of German political experience, it had indeed been in the realm of local, rather than national or state, government that liberal ideas had found fullest scope. And when the Nazis, reaching down past the *Lander*, suppressed the spontaneity and autonomy of government in towns and rural communities, they wiped out, for the time being at all events, the country's most historic and fruitful contribution to the art of self-rule.[3]

1. DEVELOPMENT TO 1918

The first chapters in the modern development of local government in Germany were written in Prussia; and to a large extent the arrangements found in the past throughout other parts of the country were fashioned according to the Prussian model. High points in the growth of the Prussian system include (1) a comprehensive municipal ordinance of 1808 giving the towns greater freedom and installing in them a new plan of government embracing elective burgomasters, administrative boards, and councils, (2) development, after the final recession of Napoleonic rule, of a substantially uniform system of rural and urban communes, grouped in larger areas known as *Kreise*, or counties (literally "circles"); (3) division of the kingdom into ten provinces, each including two or three newly created *Regierungsbezirke*, or administrative districts, and (4) introduction—at

[1] See p. 784 below.

[2] On the general subject of the liquidation of the *Lander*, see A. Lepawsky, "The Nazis Reform the Reich," and R. H. Wells, "The Liquidation of the German *Lander*," both in *Amer. Polit. Sci. Rev*, Apr., 1936

[3] It may be noted at the outset that the best analysis of German local government available in English is F. M. Marx, "Germany," in W. Anderson (ed.), *Local Governments in Europe* (New York, 1939), 225–303. A good briefer account is J. K. Pollock, *op. cit*, Chap. vi.

first (1853) in the six easternmost provinces, but later in the others—of the famous three-class electoral system.[1]

Shortly after the founding of the Empire, Bismarck turned his attention to a reorganization of local government; and while his measures were designed only for Prussia, they were copied to such an extent in other German states that the Empire was in time brought to substantially uniform arrangements in most larger respects The chancellor was, of course, no believer in democracy. The objects which he sought were rather economy and stability; and to this end he considered that local administration should be in the hands of not only a paid, expert bureaucracy, but also a considerable number of unpaid, lay officers drawn principally from among the large landowners and taxpayers. The obstacles to be overcome in realizing the plan—public indifference, opposition of the existing bureaucracy, sectional differences and antipathies—were enormous, but by proceeding slowly and in a conciliatory spirit, the chancellor finally succeeded in carrying out his ideas.[2]

2. SITUATION ON THE EVE OF THE REVOLUTION

As it stood on the eve of the revolution of 1918, local government in Germany was simpler than in earlier days, yet complicated enough, less arbitrary than formerly, but still decidedly bureaucratic. In the main, the authorities of the Reich kept hands off. As in the United States, the federal system erected a substantial barrier between national government and government in the localities The function of general control was, however, exercised very effectively by the state governments; and while highways, poor relief, and some other matters were left mainly or entirely to the local areas, a far longer list—police, taxation, public domains, military matters, ecclesiastical affairs, and others—were managed exclusively or primarily by the states. Precisely as the Empire made large use of state functionaries in executing its laws, so the states relied heavily upon municipal and other local officials in administering their activities and interests. Thus in all except the largest of the Prussian areas of local government, the executive agents of the locality, elected therein, were also representatives of the central government. But, even when entrusted to the same authorities, state and local functions were kept strictly separate, and the former guarded jealously from the vantage-point of the capital. Furthermore, the large independence of officialdom from control by the

[1] See p 618, note 1, above.

[2] Bismarck's interest in local-government reform was whetted by the writings of a leading German jurist, Rudolf Gneist, long a close student of English local government, and author of *Geschichte des Self-Government in England* (1863).

elective assemblies so preeminently characteristic of the régimes in the states was reproduced all along the line in local government.

3. GREAT CHANGES AFTER 1918

The collapse of the Empire and the rise of the Republic ushered in a number of significant changes. General structural arrangements, to be sure, remained much as before; the casual visitor to the country would have seen little to suggest that there had been any change at all. But, in the first place, democracy waved its wand over local no less than over state and national government, and for the first time the principle of true popular control was enthroned. The notoriously undemocratic three-class electoral system, for example, totally disappeared. While, however, the people of provinces and towns were being admitted to self-government on democratic lines, the Weimar constitution and the laws enacted under it were withdrawing from them, actually or potentially, a large share of the more important matters over which they might have expected to wield control. The states, to be sure, were so greatly weakened that they were not likely thenceforth to interfere as much with local autonomy, by virtue of their own authority, as before. But the national government was granted powers of legislation and administrative supervision which, even if not utilized to the full, were certain to cut deeply into local rights of self-government. Consider, for example, the lengthy list of matters—poor relief, public health, employment, insurance, trade, industry, dramatic entertainment, and what not—upon which the Reich might legislate as freely as it liked. Note, too, the sweeping provision for Reich legislation to promote "public welfare" and protect "public order and safety." Observe the powers to lay down fundamental principles concerning education, real-estate laws, public corporations—even "matters relating to burial." Recall the almost numberless provisions of that formidable portion of the constitution dealing with "fundamental rights and duties of Germans," *i.e.*, the bill of rights. And bear in mind that in the execution of all national laws relating to these matters—a function left largely to the *Lander*, and by them passed on to the localities—the authorities at Berlin had broad powers of supervision and control. Not only, too, was the national government endowed with these powers; impelled in increasing degree by financial difficulties of local authorities (aggravated by depression conditions), it exercised them, or most of them, on lines which steadily reduced the actual competence of the *Länder*, and by the same token left provinces, circles, and municipalities with steadily diminishing discretion. Local government was in its structural arrangements

more democratic than formerly. It also had a wider range functionally. It was, however, so much less free and autonomous that in the average city or other jurisdiction far more expenditure was incurred every year for activities prescribed and regulated by national or state authority than for purposes within the decision and control of the inhabitants themselves. Weimar centralization pointed straight in the direction of later Nazi "coordination"; in particular, precarious local finances opened the way for totalitarianism.[1]

AREAS AND AGENCIES OF LOCAL GOVERNMENT UNDER THE NAZI RÉGIME:

When, early in 1933, a coordination act promulgated by the Nazi cabinet undertook to assure that locally elected councils should in every case, like the diets of the *Lander* and the Reichstag itself, contain majorities favorable to the new order, suspicion arose that all existing areas and agencies of local government would presently be extinguished. Not even an authoritarian government, however, can operate without the aid and support of local institutions; and later measures—notably the comprehensive Municipal Code of 1935—made it clear that, while drastically reoriented politically in line with the general character of the régime, local government would continue to be carried on in provinces, districts, counties, and communes substantially identical with those existing in the past. A review of local government as found today involves, therefore, taking notice (a) of the way in which areas on each main level were organized formerly, and (b) of what has happened to them under Nazi reorganization.

1. THE PROVINCE

Allowing for some divergence among the states, and thinking primarily of Prussia (as being by far the most extensive), the largest local-government area has commonly been the province; and in Prussia the number of provinces today is 10, with the metropolitan area of Berlin and the territory of Hohenzollern in the south enjoying practically equivalent status.[2] Prior to 1933, each province had as its own locally controlled agencies of government (1) a *Landtag*, or assembly, chosen for six years by universal suffrage, with proportional representation,[3] and endowed with powers to legislate within its field of authority, to vote

[1] On the relations of German municipalities to the Reich and the *Lander* before 1933, see R. H. Wells, *German Cities* (Princeton, 1933), Chaps VI–VII, B. W. Maxwell, *Contemporary Municipal Government of Germany* (Baltimore, 1928), Chap. II.

[2] Prussian provinces are as large as many of the *Länder*, and considerably larger than the average English county or French department.

[3] It will be recalled that under the Weimar constitution *all* elections of governing bodies, national, state, and local, were required to be conducted in accordance with this principle.

the provincial budget, to levy taxes and borrow money, and to supervise the management of provincial affairs; (2) a small *Provinzialausschuss*, or executive committee, chosen by the assembly; and (3) a *Landesdirektor* or *Landeshauptmann*, also chosen by the assembly, and serving as chief executive, perhaps more properly as a sort of provincial business manager. Superimposed upon these agencies—all deriving their authority from the electorate—were, however, in each province other officials whose authority came directly and solely from the state government, chiefly (1) an *Oberpräsident*, or chief president, charged with supervising the administration of state business in the province; and (2) a *Provinzialrat*, or council, which functioned as an administrative court and aided the chief president in reaching decisions on police ordinances and other matters within its competence. What has happened to this provincial set-up at the hands of the Nazis can readily be surmised. Not only the locally chosen, but also the state-appointed, authorities have disappeared completely, and in their places have been substituted (1) a chief authority, known still as *Oberpräsident* (chief president), but appointed by the Führer on nomination of the minister-president of the *Land*, and, as chief administrative representative of the national government in the province, charged with carrying out all orders received from Berlin and with supervising all local government in his area in the interest of both party and state; and (2) a new type of provincial council, partly *ex officio* and partly appointed by the minister-president, presided over by the chief president, and endowed with only advisory functions, *e.g.*, in connection with the budget.[1] The chief president is himself a member of the national civil service, and provincial government has become merely a localized branch of national administration, with functions developed farthest in domains such as agriculture, public welfare, highways, and planning.

2. INTERMEDIATE AREAS

In Prussia, and to a considerable extent elsewhere, have been, and still are, two "layers of government" between the province at the top and the *Gemeinde*, or commune, at the bottom. The uppermost, or *Regierungsbezirk*, has always been only, as its name suggests, an administrative district; and it was a comparatively simple matter for the Nazis to displace a state-appointed district president and an associated district committee with (1) a supervisory district president

[1] For the law of July 17, 1933, on provincial councils, see J. K. Pollock and H. J. Heneman, *op. cit.* (2nd ed.), 12–15.

designated (in the case of Prussia) by the minister-president of the *Land*, under authority delegated by the Fuhrer, and (2) a new mixed type of committee, which, like the old one, adds to its other duties service as an administrative court. Before 1933, the second intermediate area—the *Kreis*, or county, 361 in number in Prussia—was a true area of local self-government. Many were *Landkreise*, or rural counties; others were *Stadtkreise*, or urban counties, which, as being cities or other thickly populated areas, had been set off from the rural counties in which they were situated and endowed with special powers putting them somewhat in the position of English county boroughs. In any event, the county had an elective assembly, an executive committee chosen by this assembly, and a *Landrat*, or county manager, designated by the state government, usually on nomination by the assembly. Here, too, the elective principle has now been discarded completely, with the county manager emerging as an appointee of the provincial chief president, assuring that he will be no less diligent in "interceding for the National Socialist state" than are other "career men" in the hierarchy. A comprehensive county code which will do for rural government what the municipal code of 1935 has done for the government of cities has long been in preparation, but held back by the exceeding complexity of a problem of city-county relations which has baffled local-government reformers in the United States, although solved with some genuine approach to success by Englishmen who in 1888 hit upon the device of the county borough.

3. THE COMMUNE

From far back, the smallest, and therefore basic, unit of local government in Germany has been the *Gemeinde*, or commune, resembling the French commune not only in being, as a rule, an area firmly rooted in history, but also in that, with scant exceptions, every square foot of soil in the country has been included in one such area or another. Shortly before the Nazi era, the number of *Gemeinden* in the principal *Land*, *i.e.*, Prussia, was in the neighborhood of 51,700. By reason of consolidations (arising often from population shifts), it, however, in 1937 was 50,163—46,573 *Landgemeinden*, or rural communes, with populations of under 2,000, and the rest *Stadtgemeinden*, or urban communes, with populations above that figure, and all with average areas of from two to three square miles. Since 1935, communes can be extinguished, divided, or created by national decree, as illustrated in 1937 when three near-by Prussian municipalities were merged by cabinet action with the old free city of Hamburg.

4. FORMER VARIETIES OF COMMUNAL GOVERNMENT

Formerly, rural and urban communes were differentiated legally, as well as by physical and populational characteristics. Petty rural areas, consisting usually of a village surrounded by farm or forest land, resembled certain Swiss cantons in having no representative bodies and conducting their affairs directly through the medium of a primary assembly of electors. Larger ones had an elective council and, for administrative purposes, a *Vorsteher*, or director. Urban communes differed in governmental organization to an even greater extent; a competent German authority counted up no fewer than 12 different forms prevailing somewhere or other in the Empire [1]—forms which an American writer, however, has been able to reduce to three main types—the magisterial type, the mayor type, and the council type.[2] Very briefly indicated, the salient features of the magisterial type were (a) a popularly elected council, (b) a collegial magistracy composed of *Stadtrate*, or magistrates, chosen by the council, some for their technical qualifications, others on more general grounds, and wielding large powers, both singly and collectively, and (c) a burgomaster, or mayor, chosen also by the council and enjoying prestige as nominal head of the government, although ranking only as *primus inter pares* among the magistrates. In the second, or mayor, type, the burgomaster was a genuine authority, like the mayor in the familiar American mayor-council set-up, with a strong admixture of the functions of a city manager. In the third, or council, type, on the other hand, the council, carrying on the government of the municipality through its committees and through permanent administrative officials whom it chose and directed, was the important authority. The first two types were commonest in Prussia, the third in Bavaria and Württemberg.

THE NAZIS INTRODUCE UNIFORMITY. THE MUNICIPAL CODE OF 1935

Each of the three general plans of municipal government had its partisans and its critics, but observers commonly agreed that the general tendency was in the direction of the strong mayor type; and when, encouraged by the broad trend toward unification under the Weimar régime, people who favored uniform nation-wide regulation of municipal organi-

[1] O. Benecke, "Reform der Stadteverfassung," Berlin *Vossische Zeitung*, Mar. 21, 1930.

[2] R. H. Wells, *German Cities* (Princeton, 1933), 181. This book is a splendid treatise on German municipal government in all of its aspects as existing before the Nazi period. Excellent also is B. W. Maxwell, *Contemporary Municipal Government of Germany* (Baltimore, 1928).

zation began agitating for the adoption of a single municipal code for the Reich, the system most often proposed for imposition upon the municipalities everywhere was that particular one. Prior to 1933, there did not seem to be much of a chance for such a code, because opinion was too diverse and the notion too prevalent that, after all, municipalities should be left free to select their style of government in accordance with what they conceived to be their individual needs. The Nazis, of course, took a different view. For them, communal government, like all other government, must be overhauled and brought into line with totalitarian concepts; and, starting with displacement of chief officials in nearly all communes with men devoted to the new régime, the Berlin authorities advanced to a new general municipal law for Prussia in December, 1933, and eventually to the promulgation, on January 30, 1935, of a *Deutsche Gemeindeordnung* (German Municipal Code), which for thoroughness of unification certainly left nothing to be desired by people who in earlier days had favored municipal uniformity.[1] Arranged in 121 articles filling 30 pages or more of print, and applying to all *Gemeinden* alike (except only that Berlin was exempted),[2] the code deservedly ranks with great municipal statutes in other countries, such as the English Municipal Corporations Consolidation Act of 1882 and the French Municipal Code of 1884. Declaring itself a "basic law of the National Socialist state," the measure proclaims in its preamble that "the reconstruction of the Reich will be completed on its foundations"; and, as pointed out above, a similar great code for local government on higher levels—speaking broadly, rural local government—is in the offing. Meanwhile, the *Gemeinden* have entirely lost the somewhat independent and autonomous status formerly enjoyed under the *Lander* and have passed under direct and all-inclusive control of the Reich, which means, concretely, of the Ministry of the Interior at Berlin and its great hierarchy of agents in provinces, counties, and other areas, who, however (so says the law), are to exercise their supervision in such a way that "the joy of responsibility of the municipal administration shall be promoted and not diminished."

[1] The text of this measure will be found in the *Reichsgesetzblatt* (1935). I, 49 ff. For an English translation, see W. E. Rappard *et al*, *Source Book*, Pt IV, 34–65, also W Anderson (ed), *Local Government in Europe*, 277–303. Much assistance in the preparation of the code was given by a *Deutscher Gemeindetag*, a league or union of municipalities established in 1933 and endowed, as a corporation of public law, with extensive research and advisory functions See F M Marx, "The New Roof over German Local Government," *Nat. Munic. Rev.*, May, 1934

[2] The old legal distinction between rural and urban *Gemeinden* now disappeared.

THE SYSTEM TODAY

On the basis of regulations so elaborate as those of the law of 1935, a great deal could be said about contemporary German municipal government. A few salient features only, however, can be pointed out here. To begin with, as in counties and provinces, all organs of popular representation have been abolished and the "leadership" principle completely installed. People who used to argue for a strong mayor type of government ought to be satisfied now, for practically all formal governmental authority within the commune is at present concentrated in the hands of a mayor, appointed, on recommendation of the party agent (to be spoken of below), by the Minister of the Interior at Berlin in the case of places of over 100,000, in other cases by a national governor, district president, or other designated authority. Serving terms of 12 years, and expected normally to be reappointed, mayors in all places of 10,000 or more are national civil servants; and in any event, as "leaders," they "form, declare, and carry into effect the municipal will"—an arrangement which, in the Nazi view, constitutes "no denial of municipal autonomy, but its noblest form of realization." Associated with the mayor is a body of from 12 to 36 unpaid councillors designated by the party agent with regard for qualifications and reputation, serving for six years, and designed "to keep the administration in close touch with all the citizenry," yet, like the corresponding bodies in other local-government areas, endowed with advisory functions only. And, of course, in varying proportions according to the municipality's size and needs, there are administrative departments, not greatly changed, in point of fact, from what they previously were, except that they now are in charge of the mayor's appointed *Beigeordnete*, or deputies. Mention has been made of the party agent, and this new figure on the municipal stage, although holding no municipal office, is in some respects the most important performer. Appointed by the Deputy-Fuhrer from among local Nazi leaders and serving without pay, the agent approves the municipal charter, nominates to the appointing authority candidates for mayor and for department headships, appoints the municipal councillors "in agreement with the mayor," watches here, admonishes there, and in general keeps the government reminded of its duty, in common with all representatives of the régime, to "intercede for the National Socialist state." It is only fair to recognize that the Municipal Code undertakes to carry over much of what was best in German local government in the past, and that at points it almost leans over backwards in its insistence upon good administrative principles. It nevertheless is the handiwork of a régime grounded

upon one-party control; and in introducing the party agent, it attempts a seemingly impossible compromise between administrative impartiality and political motivation.

THE GOVERNMENT OF BERLIN

National capitals commonly have arrangements for government prescribed in legislation enacted especially for them and differing considerably from those prevailing in other municipalities of the country.[1] The case of the German capital has been particularly interesting. One of the fastest-growing cities in the world, with satellite suburban communities steadily being brought within its bounds, the primary problem relating to it came years ago to be that of whether its organization should be on federal lines, as in the case of metropolitan London, or more centralized, as in Paris. After considerable experimentation, a charter of 1920 achieved some consolidation, introducing for the city as a whole a system (with a large elective council, a magistracy of 24 members, and two burgomasters) conforming in general to the magistrate type found in other Prussian municipalities, yet also fundamentally federal, in that 20 "administrative districts" were endowed with extensive powers and with the full governmental apparatus of a separate city.[2] Although hailed as an epoch-marking advance, the scheme in practice showed plenty of faults, most of them connected in one way or another with the lack of centralized responsibility, and in response to widespread demand, an amending law of 1931 undertook to tone it up, chiefly by abolishing twilight zones that had opened the way for scandals rare in German municipal history, and by strengthening the authorities at the center. How effective the changes would have proved will never be known, for in 1933 the Nazis, long demanding a clearing up of the "Berlin mess," descended upon the scene, placed above the local government a Reich commissioner endowed with sweeping authority, and in effect took full control of affairs. The Municipal Code of 1935 left the metropolis out of its provisions. But a supplementary measure of the following year, in the form of a new charter, applied them to the capital in practically all of their features, so that nowadays its government is not notably different from that of other larger *Gemeinden*. A powerful mayor heads up the system; an appointive council of 45 members renders advisory services; a party agent—none other than the redoubtable Reich Minister of

[1] On London, see pp. 362–363 above, on Paris, pp. 595–596

[2] For the more important parts of this charter, see T. H. Reed and P. Webbink, *Documents Illustrative of American Municipal Government* (New York, 1926), 503–512.

Propaganda, Dr. Goebbels—plays, on an enlarged stage, the rôle assigned that busy political coordinator elsewhere. There are, however, subordinate mayors in the surviving districts.[1]

MUNICIPAL ACTIVITIES—FINANCE

German municipalities have characteristically taken a broad view of the functions of government, and hence have gone far in developing social services and in owning and operating their public utilities. The code of 1935 contemplates no curtailment of collective enterprise in principle; the lengthiest of its sections (Part VI) is indeed devoted to the subject. Taking the view, however, that a good deal of ill-advised activity has been engaged in in the past, and guided by the general Nazi objective of thoroughgoing centralized control, the framers of the measure wrote into it many specific, and even rigid, limitations upon municipal undertakings, especially in the domains of economic enterprise and of finance—limitations which in many cases are entirely sensible and sound. Unless in case of extraordinary need that could not be foreseen, a municipality must acquire property only as it can pay for it; proceeds from sales of municipal property must be added to reserves or applied to debts; economic enterprises may be undertaken or enlarged only if justified by a public purpose, and only if the purpose cannot be better served in some other way; banking enterprises may not be undertaken, and in all cases of new or altered enterprises, the consent of designated higher authorities must be secured. The effect of such tightened regulations will probably be to impede the further growth of public ownership and control, and this will not be wholly displeasing to capitalist elements supporting the régime. More frugal management of municipal affairs may likewise, however, be expected. Portions of the law having to do with debts, budgets, and other aspects of finance are particularly ample. As in the Weimar period, local governments must subsist very largely on the proceeds of real property and business taxes, supplemented by allotments from the treasury of the Reich—allotments increased substantially when, in 1937, the enormous burden of expenditures for elementary and secondary schools and for highways was transferred from the *Lander* to the *Gemeinden*. Entering the Third Reich with "a mountain of debt," municipalities have since contrived to reduce the load appreciably, but in many instances would still stand in danger of bank-

[1] On Berlin government before the Nazi period, see R. H. Wells, *German Cities*, Chap VIII, W Norden, "Berlin's New Government," *Nat. Munic. Rev*, Dec., 1931, and S. Greer, *Outline of Governmental Organization within the Cities of London, Paris, and Berlin, with Explanatory Charts* (New York, 1936)

ruptcy save that the national government can be depended on to underwrite their obligations when they find themselves pressed to the wall. Moreover, the law of 1935 places strict limitations upon incurring new indebtedness. Firmly regulated, too, are all aspects of budgetary procedure, not only by the law mentioned, but by a special budget act (for places of over 3,000 population) of two years later. Full publicity for fiscal management is provided for, with the mayor definitely responsible for seeing that requirements of law, supplemented by instructions from the ministers of interior and finance, are carried out to the letter. Allowing always for the party slant to which all government in the country is subject, the arrangements for municipal administration, and especially for municipal finance, present much to be commended.[1]

As is evident from many things that have been said in preceding pages, German totalitarianism aims not merely at welding all government, from Reich to rural commune, into a monolith, but at regimenting social, economic, and cultural life under all-embracing state control, and indeed at maintaining the nation permanently on a basis of discipline and efficiency which in freer lands would be associated only with a war economy. In closing the present chapter, a glance may be taken at a few of the things that have been attempted or achieved in the single, though basic, domain of economic activity.

NATIONAL-SOCIALIST ECONOMIC VIEWPOINTS AND AIMS

When the Nazis came to power, they had something of an economic program, even though not very coherent. Trusts and department stores were to be nationalized; profit-sharing was to be introduced in large concerns, "land interest" and speculation in land were to be suppressed, "professional and trade chambers" were to be given encouragement.[2] Not all of what was originally envisaged has been brought to pass, quite a good deal seems, indeed, to have been conveniently forgotten. But other ambitious undertakings have been embarked upon, leaving their impress upon industry,

[1] German municipal activities are discussed at some length by F. M. Marx in W. Anderson (ed.), *op. cit.*, 253–272. On finance, see M. L. Newcomer, "Fiscal Relations of Central and Local Governments in Germany under the Weimar Constitution," *Polit. Sci. Quar.*, June, 1936, and *Central and Local Finance in Germany and England* (New York, 1937).

[2] Numbers 13–17 and 25 in the Twenty-five Points. Not baldly announced, but certainly intended, was also the expropriation of the Jews. On the carrying out of this tacit portion of the program, see M. Ascoli and A. Feiler, *Fascism for Whom?*, 246–253.

trade, agriculture, transport, and labor at almost every turn. To be sure, there has been no effort or purpose to turn the economic world upside down in the fashion undertaken by the Communists in Russia. As matters of broad principle, private property and private initiative are fully upheld. With a view to stepping up armament production, the government established one extensive plant—the Goring iron and steel works—planned to exploit poorer and hitherto unused ore resources. Yet some of the stock in this enterprise was pressed upon private investors; various industrial stocks and bank-shares acquired under the Weimar régime have been disposed of; and the authorities disclaim having in mind any collectivization of industry or other economic enterprise. As pointed out elsewhere, "socialism" in Nazi parlance in no wise denotes what is ordinarily understood by it elsewhere. If it has any definite meaning at all, it is only what is conceived of as a return to the traditional Prussian principle of priority of the general welfare over the welfare of the individual (*Gemeinnutz geht vor Eigennutz*).[1]

Under Nazi theory, however, what is for the public, *i.e.*, the national, welfare is for the Fuhrer and his subordinates to determine. And as they have determined it up to now, it involves penetrating and permanent state control over all economic organization and processes, a control made tangible and emphatic by a steady stream of regulations, commands, restrictions, and requisitions. Private property survives—but people must expect to be told how they may and may not use their property, including liquid capital;[2] private initiative is lauded—but initiative regulated, restricted, and commandeered by the government. Free competition is paid lip service—although simultaneously throttled, as in foreign trade, by government-created monopolies. Those who, in agriculture and industry have reached a certain status are protected there—but also tied there. Not only so, but the government has gone in extensively for economic planning, and to facilitate such planning and the stringent controls entailed, it has organized virtually the entire German people into a series of huge occupational corporations, or "estates" (*Stande*), through which the groups concerned may most effectively carry out the Fuhrer's will in the service of the Reich. Among these estates, the most important are those of Agriculture, Trade and Industry, Transport, the Chamber of Culture,[3] and the Labor Front;

[1] As a matter of fact, the Weimar constitution itself proclaimed a principle not very different. See Art. 153.

[2] "V.", "The Destruction of Capitalism in Germany," *Foreign Affairs*, July, 1937.

[3] See p. 742 above.

and it will facilitate our understanding of Nazi rule in the economic realm if we single out two or three of these for a word of comment.

THE ESTATE OF AGRICULTURE

First of the number to be established, the Estate of Agriculture is grounded upon the consideration that the production and distribution of food and other farm products is the most basic national concern. Of weight with the Nazis, too, is the notion that the peasantry is the most purely German segment of the nation, and one which must at all odds be held in firm allegiance to the régime. Included compulsorily in the Estate are all people engaged in producing, processing, and distributing farm commodities;[1] and 20 regional associations comprised in it are linked up under a National Peasant Leader, who also is Reich Minister of Agriculture, and who, although advised by a numerous council, is a well-nigh autocratic administrator of the Estate's affairs. The purpose of the organization, indeed, is not so much to launch policies or to carry on business of its own (except only in the domain of marketing) as rather to coördinate agricultural interests in aiding the government to win the "battle of production" by which the country is to be made agriculturally self-sufficient. Assisted from this source, the government regulates agricultural production, controls prices, and plans and carries out legislation in behalf of the peasantry. Some of the objectives envisaged in the Nazi program have as yet, to be sure, been only partially attained For example, the Twenty-five Points called for the elimination of land interest and of speculation in land, uncompensated expropriation of land for public purposes, and land reform "adapted to national needs." The problem of interest on farm mortgages has been attacked and rates reduced somewhat, without, however, easing the burden more than in part. Nevertheless, artificial bolstering of prices, shifting of a greater share of the tax burden to industry, and subsidizing agricultural labor under a national labor conscription plan have helped considerably, and altogether the farmer has fared well under the régime. With a view, too, to preventing moderate-sized land holdings from being involuntarily alienated or split up among heirs, a Reich Property Inheritance Law of September 29, 1933, protects an owner of less than 309 acres from having his farm attached or sold for debt, and requires also that it pass undivided to a single heir.[2] Thus, it is hoped, stability will be lent the agricultural class, and the "free peasantry," as the "blood source of the German people," will

[1] Also, in point of fact, those engaged in fishing, viticulture, and forestry.

[2] For portions of the text, see W. E. Rappard *et al., Source Book*, Pt. IV, 94–96.

be safeguarded.[1] One huge task which the Nazis set for themselves has not as yet been entered upon systematically, namely, the breaking up of great estates, particularly in eastern Prussia, with redistribution of the land among small holders. As Brüning and other statesmen discovered years ago, this is a matter filled with political dynamite. In a number of instances, however, individual large proprietors —often pressed by bankruptcy—have voluntarily sold their lands to the government, which thereupon saw to a suitable distribution of them in connection with resettlement enterprises such as Brüning himself projected.

THE ESTATE OF TRADE AND INDUSTRY

Into the broad domain of industry and trade, government regulation has penetrated even more deeply than into that of agriculture, but with results considerably less beneficial to most of the interests affected. Here, too, we find an "estate," mobilizing compulsorily all former chambers of commerce, trade associations, and other organizations having to do with industry, broadly defined (and also commerce), and federated under a "roof organization" known as the National Economic Chamber. The Minister of Economics is not the official head, but he appoints the person who serves in that capacity in lieu of him; and an advisory council consists of representatives of the numerous component bodies.[2] Since 1936, this machinery, and indeed all economic organization in the country, has been subordinated to the Second Four-Year Plan under General Göring—an ambitious program for coordinating and developing economic resources and activities to the end of making the nation, within the period indicated, as nearly self-sufficing as is humanly possible, alike in peace and war.[3] Especially, of course, has there been emphasis upon the production of armament and upon the invention and manufacture of synthetic materials and commodities, in lieu of articles such as rubber, cotton, and petroleum derivatives which normally would have to be imported in their natural state

[1] In 1938, the number of such "hereditary farms" was not far from 700,000. Under this arrangement, speculation in land has been curtailed somewhat, in line with Nazi promises.

[2] Together with a National Labor Chamber appointed by the head of the Labor Front, the National Economic Chamber forms an advisory National Council of Labor and Industry.

[3] A First Four-Year Plan operated in the period 1932–36, the second plan, in continuation of it, was announced in September, 1936, for the period to 1940. For a full account of these plans, see C. W. Guillebaud, *The Economic Recovery of Germany from 1933 to March, 1938* (London, 1939), Chaps. II–III. In 1937, Hitler announced, in addition, a "Twenty-Year Plan" for rebuilding the country's major cities, and indeed rebuilding Germany as a whole "in pride and dignity, beauty and utility."

from abroad. And so feverish has been the government's activity in these directions that unemployment has almost disappeared (in some fields, indeed, there is an actual scarcity of labor), and a show of high national prosperity has been created. For industry, however, serious penalties have been entailed. Plants are ordered arbitrarily to change their line of products, to step up their output to prescribed amounts, even to move from one location to another. Manufacturers are told what raw materials they may use and at what prices they may buy and sell. Private initiative may be, as the Nazis used to say, the life-blood of national prosperity, but in these later years it has been almost extinguished under the wet blanket of a planned and commandeered economy. Consumers suffer, too, from scarcity of commodities the production of which does not fit into the prevailing program, from the inferior quality of some of the synthetic and other substitute products, and from soaring prices. Altogether, "autarchy," even if capable of realization, comes at great cost, and can be justified to industrialist, worker, and consumer alike only on the ground of supreme necessity for assuring victory in war.

THE LABOR FRONT: 1. ORGANIZATION

The most impressive organization in the country in point of numbers, and also one of the most powerful, is another of the estates, known as the *Arbeitsfront*, or Labor Front. The Nazis had not long been in power in 1933 before they decreed the dissolution of all trade unions, and likewise of employers' associations in so far as constituting instrumentalities for bargaining with labor; and in place of them was set up the Labor Front, which promptly took over all trade-union property and funds.[1] On the theory that all persons engaged in economic activities, whether by hand or by brain (except in the separately organized domains of agriculture and the civil service), should be linked up in one grand organization, both workers and employers are included in the membership, and although membership is in principle voluntary, practically all workers (except farm laborers and civil servants) and a substantial majority of employers, as well as of professional people, find it to their interest to belong—a total in 1939 of not far from 30 million persons. Like the other estates, the organization is not an organ of the state; and it in no way is subject to the Ministry of Labor. Unlike the others, however, it is one of the eight organizations

[1] Trade unions at the time numbered 169 and had a membership of some five millions out of about 15 million wage-earners in the country. The bulk of the members were socialists, and the unions themselves formed the backbone of the Social Democratic party

affiliated with the National Socialist party [1]—not a member organization like the Storm Troops or Hitler Youth, but an auxiliary, with in fact the National Organizer of the party, Dr. Robert Ley, as its official head and, in one of its aspects, constituting a propagandist organ rivalled only by the Ministry of Propaganda. Organization within the huge structure is both horizontal and vertical. Territorially, it follows the pattern of the party, with a total of 33 district branches. But people engaged in economic enterprises of the same type, *e.g.*, textiles or iron and steel, are grouped also in national associations, of which there are now 19; and the primary unit of the Front as a whole is the individual plant or establishment, including both the employer and employee sides, with the former (under the characteristic Nazi formula) in the rôle of "leader" and the latter in that of "followers." [2]

2. PURPOSES AND ACTIVITIES

As stated in a decree of 1934, the purpose of the Labor Front is "the formation of a real community of achievement amongst the whole German people. It must seek to ensure that every individual can take his place in the economic life of the nation in that mental and physical condition that will make for his greatest achievement, and thereby secure the greatest gain to the community as a whole." It is not the business of the Labor Front to deal directly with wages and conditions of work, or to settle disputes between employers and workers; for these tasks, other machinery exists. The function of the Front in respect to labor relations is rather to cultivate bonds between employers and employees which, resting upon a lively sense of community of enterprise and of interest, will tend to prevent disputes from arising. "In the acceptance of this principle of solidarity," says the Minister of Labor, "and in the mutual confidence, loyalty, and comradeship resulting from it, lies the essence of the new outlook demanded by the act." The Front is therefore primarily an agency for building and maintaining morale, in the interest of industrial peace and of maximum productive efficiency. In pursuit of this objective, and with the aid of an annual budget of between 300 and 400 million marks, it engages in activities of widely varied kinds. It runs building societies and insurance companies for the benefit of its members, and provides them with free legal assistance. Through a section designated *Schonheit der Arbeit* ("Beauty of

[1] See p. 738 above.

[2] The party members in a plant are commonly organized in party "cells," which, within their limited spheres, look out for party interests and keep up propaganda.

Work"), it inspects factories and workshops and makes suggestions for improvements—as to ventilation, lighting, sanitation, etc.—aimed at promoting the pleasure, convenience, and safety of workers. It conducts an annual competition for the honor of being designated a "model business." It holds yearly examinations (based to quite an extent on training which it itself provides in its vocational schools) designed to give capacity a chance to show itself and to enable the winners more rapidly to rise to the top in their fields of employment. Through a branch termed *Kraft durch Freude* ("Strength through Joy"), it mobilizes the recreational (including athletic) organizations of the country, promotes vacations with pay, provides concerts and other entertainments at modest prices, outings, games, and inexpensive holiday excursions by water to the North Sea and the Mediterranean and by land to the Bavarian Alps and other beauty spots of Germany—all with a view to giving the worker a new outlook on life, helping him to make use of leisure for physical, mental, and aesthetic betterment, and (one may be sure) promoting his contentment with the régime. Not to be overlooked, apropos of this last consideration, is also the Front's supremely important function of cultivating National Socialist loyalties among the members.

LABOR RELATIONS

The legal position of labor—too vast a subject to be taken up here, and a bit aside from our main line of inquiry—rests upon provisions of a voluminous Law for the Regulation of Labor dating from January 20, 1934. Suffice it to say (1) that independent organization of labor is forbidden; (2) that strikes and lockouts are prohibited; (3) that "labor trustees," appointed as government officials by the Minister of Labor in each of 14 labor districts laid out in 1933, fix minimum wages and maximum hours (up to 10), and adjudicate disputes between employees and employers; [1] (4) that every business employing more than 20 persons must have a "confidential council" of from two to 10 representatives of employer and employees, charged with advising on matters involving intra-establishment relations, [2] (5) that there are labor courts for deciding appeals against dismissals; and, finally, (6) that a new set of 15 tribunals, known as "courts of social honor," [3] has been

[1] Collective bargaining is, of course, one of the many former rights which labor has lost.

[2] These councils bear some resemblance to the "works councils" existing under the Weimar régime, although their powers are smaller

[3] There is also a Supreme Court of Social Honor, to which appeals from judgments of the 15 regional courts may be carried

brought into existence for the trial of cases in which, in the opinion of the trustee of the district, the "honor" of employers or employees (usually the latter) is alleged to have been "insulted" in a fashion such as to make the matter one of public interest rather than of concern only to the parties involved. Such courts consist of an employer and a representative of employees sitting with a professional judge appointed by the Minister of Justice, and their powers extend to admonition, fine, and even removal of an employer from the headship of his firm.[1]

SOME RESULTS OF LABOR POLICY

The degree of success achieved by the new labor régime, and in particular the degree of satisfaction of working people with the régime, must, of course be as yet largely a matter of opinion, just as must the actual attitude of the nation as a whole toward Nazi totalitarianism in its entirety. No doubt can be entertained that Nazi policy has been aimed consistently at raising the status of the wage-earner in both the economic and the social scale, thereby compensating him for trade-union and political rights, and for personal liberties, which he clearly has lost. Nor can there be any doubt that the new set-up —both in its legal aspects and through the less formal medium of the Labor Front—has worked more largely to the advantage of the employee than of the employer class; even employers who are enthusiastic Nazis lodge complaint on this score. Clear it is also that in Germany today talent and capacity among workmen are better assured of recognition and reward than in earlier times, or probably in any other country. On the other hand, labor has been subjected to a wide variety of harsh devices—conscription, service camps, restrictions upon freedom of movement, and other forms of regimentation—which have placed it under a discipline of almost military rigor. Wages and standards of living are not notably higher than a decade ago. And the tremendous drive for achievement of the objectives of the Four-Year Plan on schedule time has borne fruit in at least a temporary let-down in labor standards. As indicated above, unemployment has been reduced almost to the vanishing point, so that the country presents, in a most unusual degree for these times, the spectacle of a *nation at work*. Some of the methods, however, by which this end has been attained are, to say the least, dubious; and the one which probably has proved the most effective, *i.e.*, the

[1] For full discussions of the courts of social honor, see N. A. Pelcovits, "The Social Honor Courts of Nazi Germany," *Polit Sci. Quar.*, Sept, 1938, and H. J Heneman, "German Social Honor Courts," *Mich. Law Rev.*, Mar., 1939. More than 200 cases a year are handled by these tribunals, nine-tenths of them involving charges against employers.

piling up of titanic armaments, has contributed powerfully to bringing on another European war.[1]

[1] Fuller accounts of Nazi economic policies and devices will be found in J K Pollock, *op. cit*, Chap. VII, R L Buell (ed), *New Governments in Europe* (rev ed.), Chap. VIII, M Ascoli and A. Feiler, *Fascism for Whom?*, Chap. VII, F Ermarth, *The New Germany*, Chap IV, J. C De Wilde, "Germany's Controlled Economy," *Foreign Policy Reports*, XIV, No 24 (Mar 1, 1939), G D H Cole, "Nazi Economics How Do They Manage It?", *Polit Quar*, Jan–Mar, 1939, and Anon, "The Economic Régime of the Third Reich," *Round Table*, Dec, 1938. More extended treatises include C W Guillebaud, *The Economic Recovery of Germany from 1933 to March, 1938* (London, 1939), E C D Rawlins, *Economic Conditions in Germany* (London, 1936), and R A Brady, *The Spirit and Structure of German Fascism* (New York, 1937). For special discussions of the Labor Front, see W N Loucks and J. W Root, *Comparative Economic Systems* (New York, 1938), 619–652, T Cole, "The Evolution of the German Labor Front," *Polit Sci. Quar*, Dec, 1937, H J. Heneman, "Labor Relations in Nazi Germany," *Mich Alumnus Quar Rev*, Dec, 1938, and B. Ranecker, *Social Policy in the New Germany* (Berlin, no date).

CHAPTER XL

The Pre-Fascist Framework of Parliamentary Government

UNTIL a quarter of a century ago, modern Italy received no great amount of attention from students of comparative government. Although ranked as one of the principal European states, and heir to a history of rare richness and significance, the recently created kingdom had borrowed most of its political institutions from England and France, and such interest as its political life attracted hardly extended beyond casual and usually rather superficial inquiries into the extent to which the importations from abroad had taken root and the ways in which they were functioning in their new environment. The general impression was —and the later conquest of the country by Fascism confirmed it—that a people ill-prepared by experience, education, and temperament had taken upon itself the responsibilities of popular government somewhat prematurely, and that parliamentary democracy as it existed in the peninsula was, at best, a tender plant which only the most patient effort over a long period of time could bring to sturdiness and fruition King, ministers, Senate, Chamber of Deputies, suffrage, electoral procedures, parties, courts, local councils and administrators—all presented some features worthy of notice. Yet outside of a few matters such as the relations between Quirinal [1] and Vatican, little was unique or especially instructive, except perhaps in a negative sort of way.

A DRAB POLITICAL SYSTEM ACQUIRES NEW INTEREST

Nowadays, all is different. To be sure, not a syllable has been added to or stricken from a written constitution which, even though of late far more honored in the breach than otherwise, has served the united kingdom in a fashion since

DICTATORSHIP ARISES ON THE WRECKAGE OF PARLIAMENTARISM

[1] The palace occupied by the royal family, figuratively, the civil or secular, as distinguished from the papal, power.

it first took its place in the family of nations. The structure of government looks quite a bit as it did when Victor Emmanuel III mounted the throne at the turn of the century. The monarch is still in his palace; ministers preside over executive departments, a cabinet meets and reaches decisions; two legislative chambers debate and pass bills, law courts hear cases and prefects carry on provincial administration. Great changes, nevertheless, have taken place. On the ruins of a weak and discredited parliamentary system has been erected one of Europe's most remarkable dictatorships. All political parties save one have been banned. Democracy—such as it was—has abdicated and autocracy has mounted, not the throne where sits a nominally supreme but actually powerless king, but the seat of an imperious prime minister in the Palazzo Viminale. In the decade and a half since these things happened, a governmental system startlingly novel even when working through old forms has been substituted for that envisaged in the constitution, and a still more revolutionary politico-economic order grounded upon syndicates (unions) and corporations has been projected and largely brought to realization under the designation of the "corporative state." With Fascism in the saddle, it is proposed not merely to tide the country over an era of unusual social, economic, and political stress, but to reorient it permanently in the direction of a fully integrated and strongly assertive national life. Whether, and how completely, success will crown the effort remains to be disclosed. Already, however, the régime has lasted longer, and its experiments have been carried farther, than most people a decade or more ago considered possible With a view to understanding it, we must begin by noting some aspects of the earlier political order whose shortcomings it is designed to remedy.

THE MAKING OF THE ITALIAN KINGDOM

The unification of Italy in the days of Mazzini, Garibaldi, and Cavour represents the triumph of an ideal over almost insuperable obstacles. To be sure, in the background loomed the tradition of imperial Rome, and in spite of racial intermixture resulting from successive invasions, there was sufficient cultural homogeneity to make political union logical. Geographically, however, the country is far from compact and well-knit. Notoriously, indeed, it is a patch-work of regions, some to be accounted for by the long stretch of 700 miles from the Alpine border to Sicily, others by the bisecting Apennines. History —since Roman days—has combined with geography to make unification difficult. The era of imperial decline and collapse gave way in the eleventh and twelfth centuries to a period in which expanding

business and trade laid the basis for a mosaic of city states, some of which achieved great wealth and power. Conflicting interests and ambitions, however, kept them sharply apart, long periods of domination by foreign monarchs over large divisions of the country interposed additional obstacles; and modern national states to the west—France, Spain, England—attained full stature while Italy continued a scene of apparently hopeless political particularism and strife.

1. NAPOLEON'S CONTRIBUTIONS

Not, in fact, until the time of Napoleon were the seeds of unity really planted south of the Alps. Trampling alike upon Habsburg dominion in the north and Spanish Bourbon rule in the south, the restless Corsican experimented with a system of controlled republics, abandoned it, and for a brief period brought the entire country for the first time since the age of Justinian under what was in fact, if not in name, a single governing authority. To the whole was extended the *Code Napoléon*, the new French administrative system, and numerous social reforms. To be sure, the unification was brief, and when the wave of French conquest receded, reaction overwhelmed many of the new institutions and enterprises Nevertheless, Italians had been given a new political vision.

2. FROM 1815 TO 1848

Following the collapse of Napoleon's power, the victorious Allies tried at the Congress of Vienna to set the Italian clock back. Ten states reappeared, most of them under the direct or indirect control of foreign dynasties—either the Habsburgs or the Spanish Bourbons, who, in fact, between them, once more ruled by far the greater portion of the country. Only the kingdom of Piedmont-Sardinia, in the northwest, was permitted to have a native Italian ruler; and he was pledged to a perpetual Austrian alliance. Between 1815 and 1848, absolute princes, often with foreign support, crushed all liberal movements. There were no constitutions and no parliaments, and every attempt to secure such, *e.g.*, in the kingdom of Naples in 1820, failed dismally. Nevertheless, the winds of liberalism were blowing across Continental lands, and even in Italy the *risorgimento*, or "resurrection," eventually came. The "Young Italy" movement, inspired and guided by the magnetic Mazzini, prepared the ground, and in 1848, taking advantage of the revolutionary atmosphere created by uprisings in France, Germany, and Austria-Hungary, its leaders wrested written constitutions from sundry ruling princes. Most of these instruments were repudiated at the earliest opportunity. A constitution freely conceded in Piedmont-Sardinia by the rather liberal-minded monarch, Charles Albert, and known as the

Statuto del Regno, however, survived, and, upheld against heavy pressure in later days, served without change as the fundamental law of the later Italian kingdom. Indeed, as we shall see, even the Fascist government of our time is carried on nominally within the confines of this instrument.

3. UNIFICATION ACHIEVED

Stubborn adherence to the principle of constitutional monarchy, backed by the far-sighted plans of Cavour, who in 1852 became the Piedmontese prime minister, rendered it possible for Piedmont-Sardinia to lead the way toward a belated national unification. One by one, significant advances were made. Out of alliance with France against Austria in 1859, Cavour gained Lombardy but lost Nice and Savoy. In 1860, Tuscany, Modena, Parma, and Romagna cast in their fortunes with the expanding kingdom. Aided by the exploits of Garibaldi and his famous "Thousand," the people of Sicily and Naples expelled their sovereigns and voted for annexation. Umbria and the Marches were occupied and annexed, and finally Venetia and Rome were acquired, the former as a result of the alliance with victorious Prussia in the war of 1866, the latter as an outcome of the Franco-Prussian war. The capital was transferred, first from Turin to Florence, and afterwards to Rome, and in the Eternal City, in November, 1871, was convened the first parliament of a united Italy.[1]

THE COUNTRY AND ITS PEOPLE

The kingdom thus created had a population which has increased from 27,000,000 in 1871 to some 41,000,000 in 1938, and is still growing (even though Mussolini and other apostles of national aggrandizement are far from satisfied) at a rate of not much less than half a million a year. This is a large number of people for a country of Italy's size—the more so when it is remembered that in an economic way the peninsula is less favored, and also less developed, than any other European country of similar pretensions. In certain northern sections, there has been considerable growth of industry, chiefly in its lighter forms, but scarcity of fuel and raw materials, as also of working capital, requires that the great mass of the population continue to live by agriculture. Here again, however, the nation is handicapped. Large regions are too mountainous to be cultivated; in other sections, the soil is poor; extensive marsh areas can be made

[1] The story of Italian unification is told in many readable works, such as B King, *History of Italian Unity* (London, 1899), W. R. Thayer, *The Dawn of Italian Independence*, 2 vols (Boston, 1893), and *Count Cavour*, 2 vols (Boston, 1911), and G M. Trevelyan, *Garibaldi and the Making of Italy* (London, 1911).

available only by heavy expenditure. Some parts of the kingdom suffer almost as much from excessive smallness of peasant holdings as do others from the prevalence of *latifundia*, with absentee landlords, which from time immemorial have been a prominent feature of the agricultural system. In the course of its earnest efforts to make the country more self-sufficient, the present Fascist government has reclaimed marshes, furnished farmers with seed and fertilizers, built roads and irrigation works, subsidized the production of sugar and other commodities, and promoted agricultural education, yet without bringing up the output of foodstuffs to the level of the nation's needs; and heavy migration in pre-World War times failed to solve the problem, if for no other reason, because of the large proportion of emigrants who, having bettered their fortunes abroad, eventually returned home. After the War, the outflow declined (partly because of new restrictions imposed upon the admission of aliens into the United States, partly because of limitations upon emigration adopted by the Italian government itself), and in later years of world-wide depression it almost entirely stopped. Standards of living necessarily continue low. Industrial wages are below those prevailing in Great Britain and France, and as for large sections of the rural peasantry, their condition would in most countries be viewed as wretched. As remarked by a recent writer, "through pitifully long hours, with no meat to eat, under a broiling sun, he [the agricultural laborer] scrapes together a livelihood of rice, greens, and (when it can be afforded) his favorite *pasta asciutta* (macaroni). Socially indifferent, unquestioning, and politically irresponsible, forty million people, who are passive subjects rather than active citizens, seem sufficiently happy and contented, unwilling to disturb any régime, democratic or despotic, if only *si lavora e si mangia* ('one may work and eat')." [1]

AN UNFAVORABLE ENVIRONMENT FOR PARLIAMENTARY DEMOCRACY

From all this, it will be deduced that when Italy started out, two generations ago, to build a parliamentary democracy, she labored under serious handicaps. Unity had been achieved on the map, but hardly otherwise. People's attachments were mainly to their little towns and villages. Such governments on higher levels as they had known had commonly been those of foreign princes, inspiring only suspicion and antagonism. In the second place, if unification, as observed above, had come belatedly, there is also a sense in which it had come prematurely. Presupposing parliamentary government on a nation-wide scale, it came unattended by

[1] H R Spencer, *Government and Politics of Italy* (Yonkers, 1932), 19

the political and social reorientations which in other lands had enabled such government to take root and grow. Democratic institutions were introduced, but—outside of a few industrialized districts—they were superimposed on a society essentially feudal, and those institutions and the ideas on which they were based never penetrated that society more than superficially. Even democracy must grow from within, rather than be imposed from above, if it is to show vitality. One remembers also the generally illiterate condition of the Italian people in the period of which we are speaking. In 1871, 69 per cent of the population above the age of six could not read or write—80 per cent, indeed, in the south. Conditions improved later, but even after three decades of political union, the figure for the country as a whole was still as high as 48 per cent. Still another impediment was a ban upon voting and office-holding by Catholics, imposed by the Vatican in retribution for the government's occupation of Rome and adjoining papal lands. Finally, as Professor Finer has emphasized, the country had no deeply rooted governing class, such as has played an almost indispensable rôle in England.[1] In the several aristocracies of the earlier states, in the middle class comprising the bulk of the population, perchance even in the rural peasantry, potential elements of such a class were to be found. But homogeneity, coherence, consciousness of common interest, continuity of tradition, remained to be supplied—and in point of fact have never to this day been supplied in any marked degree except as attained on a rather artificial basis by the *bona fide* upholders of Fascism.

With so much by way of background, we may turn to survey briefly the political institutions with which Italy came down to the Fascist period. The task of two later chapters will be to show what happened to these institutions at the hands of the Fascists, and in what ways those of them which survive (and, in one form or another, some of them *do* survive) are fitted into the ever-changing structure of the emerging corporative state.

THE NATIONAL CONSTITUTION

Granted as a royal charter and afterwards extended without change over the areas successively brought into the growing kingdom, Charles Albert's *Statuto* of 1848—still officially the basic law of the realm, even though not in all respects observed—is a brief document, couched in general terms. It therefore has not greatly mattered that the instrument provides no method for its own amendment;

[1] *Mussolini's Italy* (New York, 1935), 67 ff

within its broad provisions, wide latitude exists for adaptation and development, within them, indeed, Fascists seek to clothe with regularity some of the most sweeping innovations that they have introduced. In observing to the Chamber of Deputies in 1924 that the constitution is merely a "point of departure," Mussolini, indeed, was simply reflecting a view of it which has prevailed from the time when it was first promulgated. In the eyes of Italian jurists, both usage and legislation have always been sources of constitutional law, on a parity with the *Statuto* itself, the latter tending to become merely a persistent nucleus embedded in countless accretions of law and custom. After all, however, this is the fate, in varying degrees, of all basic constitutional documents, not excluding the constitution of the United States; and since no Italian court has ever refused to apply and enforce an act of Parliament on grounds of unconstitutionality, legislation palpably incompatible with the *Statuto, e.g.*, the act of 1938 by which the Chamber of Deputies was replaced by a very different sort of Fascist and Corporative Council, has always added just as truly to the ultimate, actual constitution as if clearly within the *Statuto's* limits. It may be repeated, however, that the phraseology of the basic law is so broad and general that the legislative authority might usually go a long way, in almost any direction, without clearly crossing its boundaries.[1]

KINGSHIP

In spite of the republican leanings of certain *risorgimento* leaders, the circumstances surrounding the unification of the country plainly decreed that Italy should be a monarchy. The throne was in 1848 declared hereditary in the House of Savoy, the oldest reigning family in Europe; and the present king, Victor Emmanuel III, is a grandson of Victor Emmanuel II, under whom the unification took place. In line with the general intent of the *Statuto* to establish a political system modelled on the English, the sovereign was assigned a rôle of titular headship, with actual executive power in a group of ministers. Circumstances in Italy, however, have in many ways been different from those existing in latter-day Britain, and the tenant of the Quirinal had from the outset considerably more personal authority than has for a good while been enjoyed by the occupant of Buckingham Palace. Like the French president (and for the same reason, *i.e.*, absence of a bi-party system), he had a wider range of choice in the selection of prime ministers, even though decisions were often forced upon him

[1] The text of the *Statuto*, in English translation, will be found in H L McBain and L Rogers, *The New Constitutions of Europe*, 551–560, and W F Dodd, *Modern Constitutions*, II, 5–16.

by situations beyond his control. Occasionally attending and presiding over cabinet meetings, he could frustrate the ministers by withholding approval of their acts, and, upon occasion, could even force them from office notwithstanding that they had the support of a parliamentary majority. As we shall see, refusal by Victor Emmanuel in 1922 to sign a decree of martial law projected by a panic-stricken Facta ministry left the cabinet no alternative but to resign, opened the way for Mussolini to become premier, and brought the Fascists to power without risk of bloody revolution. In short, although a "constitutional monarch," keeping as a rule quite in the background, the king was not incapable of stepping into the center of the picture and performing acts of momentous consequence.

THE MINISTRY

The *Statuto* naturally prescribed that the ministers should be appointed by the king; and, as in similar situations elsewhere, this came to mean that the sovereign selected the prime minister, who thereupon assumed the task of forming a government. There being (on account of the multiplicity of parties) no definite leader of a coherent opposition on traditional English lines, the process by which ministries were formed was generally quite similar to that obtaining in France.[1] As in France, too, ministries, being coalitions, were usually short-lived. In 74 years prior to 1922, there were no fewer than 67 ministries, almost one a year; and their expectancy of life showed no tendency to increase as time went by. Consequently, all of the criticisms on this score which can be lodged against the French system applied with at least equal force to the Italian. Parliament and the ministry were frequently at odds, and tenure of office was usually a matter of political bargaining rather than of constructive statesmanship. Plenty of times, a minister whose acts or policies were unpopular in Parliament was thrown overboard without compunction by his colleagues in an effort to prolong their own hold upon power. And while, as in France, mere shuffling of portfolios sometimes rendered a change of ministries more apparent than real, there was always sufficient instability to make true ministerial leadership difficult to develop. All in all, a ministry was rarely in a strong position. Resting from its inception upon the insecure foundation of coalition, any ministerial group was liable at any time to be confronted in Parliament with a devastating issue of confidence pressed by self-seeking leaders and factions armed with unrestricted powers of interpellation. Even the king, as we have seen, might make trouble. Individual politicians, like Depretis and Giolitti, nevertheless—

[1] Se pp 460–462 above.

backed by personal followings and elevated repeatedly to the premiership—sometimes attained quasi-dictatorial authority foreshadowing that of Mussolini.

In one important direction, to be sure, Parliament stood ready to bestow power generously upon the ministers. This was in the matter of ordinance-making. Modelled upon the French pattern, the administrative system presupposed free exercise of this kind of authority by king and ministers, and on plenty of occasions grants were expressly or tacitly made which would have amazed even persons accustomed to the fast developing administrative legislation of other countries. The final text, for example, of a comprehensive electoral law of 1882 was never considered by the chambers at all. After debating the measure to their satisfaction, they simply gave the government authority to draw up a final draft and promulgate it by executive decree.

THE CHAMBER OF DEPUTIES

1. STRUCTURE

As a presumptive parliamentary democracy, the country was equipped with a national legislature consisting of a Chamber of Deputies and a Senate. The former, at the close of the World War, contained 535 members, chosen by direct vote and secret ballot for a nominal term, as in France, of four years, although—contrary to experience in the neighboring country—dissolutions had reduced the average life of parliaments to around three years. As in France, too, various types of electoral areas had been employed—single-member districts until 1882, multi-member districts without proportional representation in 1882–91, the single-member form again from 1891 to 1919, and the multi-member plan once more—this time with proportional representation—under a law enacted in 1919.[1] The proportional system was used in only one election (in 1921), after which novel electoral arrangements of Fascist devising took its place.

Starting off in 1870 with a suffrage limited by literacy and tax-paying qualifications to only two and one-half per cent of the population, the country considerably broadened its electorate in 1912, and in 1919 arrived at universal male suffrage. As in other Latin countries,[2] women have never been made voters; and in point of fact the adoption of universal suffrage for men is to be attributed rather to a desire to cultivate favorable world opinion than to any manifest demand on the part of the people. Until Fascist com-

[1] For a brief description of this measure, see H. L. McBain and L. Rogers, *The New Constitutions of Europe*, 102–108.

[2] Except Spain. See p. 491, note 2, above.

pulsion was brought to bear, the electorate remained generally apathetic, demonstrating its indifference by a notorious amount of non-voting. Never before 1904 did more than 60.4 per cent of those entitled to vote go to the polls; even with proportional representation as a stimulus, only 52 per cent took part in the election of 1919.

2. ORGANIZATION

In organization and procedure, the Chamber of Deputies showed few features that would be novel to a person familiar with parliamentary forms and ways at Paris. Chosen by the whole body of deputies, the president was to a rather surprising degree a non-partisan moderator. The committees, on the other hand, were made up, rightly enough, on a party basis. On the model of earlier practice in France, the deputies were for a time divided by lot every two months into nine *uffici* (sections), which in turn designated from their number the members of all committees. As in France, the plan naturally failed to give representation to parties in proportion to their strength; and by 1920 it so completely broke down that a new scheme of standing committees, nearly all of them corresponding functionally to some one of the executive departments (again as in France) was adopted. Thenceforth, the party groups nominating the committee members were the true *uffici*, and the committees faithfully reflected the party complexion of the Chamber—a fact which had its advantages, yet in view of the chaotic party situation, made for intra-committee discord rather than otherwise.

THE SENATE

Aside from princes of the royal blood, who were members by right, the Senate as provided for in the *Statuto*—and as still existing in the main, notwithstanding earlier Fascist proposals to abolish it, and despite the drastic changes undergone by other parts of the government since 1922—was composed exclusively of persons appointed for life by the king, in practice, on nomination of the prime minister. No limitation as to numbers was laid down, but only the regulation that appointees should be at least 40 years of age and taken from one or another of 22 specified categories of notable personages, including high government officials, members of various scientific and learned societies, deputies of at least six years' standing, and others who "by their services or eminent merit have done honor to their country."[1] Nominees might be rejected by the Senate, although in practice little scrutiny

[1] At the beginning of the Fascist era, about two-fifths were high military and civil officials, one-fifth large landowners, one-fifth big business men, and the remaining fifth university professors and other intellectuals

was exercised except to make sure that persons appointed actually belonged to the respective classes from which they were selected. In 1935, the membership stood at 455.

Although intended to be coordinate with the Chamber of Deputies in every respect except as to originating finance measures, the Senate early went the way of a good many other second chambers under parliamentary systems of government and fell to a distinctly secondary position. This was not because of inferior quality of the membership, for much talent and capacity were in evidence, and as a checking and revising agency the body (so long as Parliament was functioning normally) did useful work. Responsibility of the ministers to the lower chamber exclusively, however, left the Senate—the more by reason of its being non-elective—relatively weak. On more than one occasion when it showed a disposition to hold out against legislation desired by the government and approved by the Deputies, its spirit of independence was curbed by the appointment of enough new senators to force it into line As might be surmised, proposals for reconstructing the membership were never lacking. As early as 1866, a Senate committee suggested that the names of nominees be presented to the crown by the various groups from which the members were drawn. In 1892, it was proposed that the Senate itself present the names. Later on, in 1919, another Senate committee brought forward a plan under which the total membership was to be fixed at 360, including 60 named for life by the crown, 60 elected by the Senate, 60 elected by the Chamber of Deputies, and 180 chosen by special electoral colleges composed, on a regional basis, of representatives of local elective bodies, industry, commerce, agriculture, and labor. Neither this nor any other proposal, however, was ever adopted.

THE COURTS

Both law and judicial organization were taken over largely from France, but with so many gaps and deficiencies that arrangements existing prior to certain Fascist reforms mentioned below called forth few admiring comments Corresponding to the office of justice of the peace in the French system was the *pretura*, or praetor's court, with jurisdiction in minor civil and criminal cases, and found in almost every one of the 1,535 *mandamenti*, or administrative districts On a higher level stood a set of courts of first instance, one in each of 162 areas, and above these a set of superior courts, together with assize courts having, as in France, original jurisdiction in grave criminal proceedings At the top—and herein lay a source of weakness—there was no single court of cassation on the French model, but instead a series

of five such tribunals, located in the historic capitals of Turin, Florence, Naples, Palermo, and Rome, and all so independent that not only was there no appeal from one to another, but the decisions of one had no binding effect as precedents upon those of the others. The court at Rome, to be sure, was assigned exclusive jurisdiction in appeals of certain types; but this did not go far toward giving it a definitely superior position. For the organization of administrative justice, France again furnished the model, but one not very successfully copied. A Council of State was considerably less independent and powerful than its French prototype; while lesser jurisdiction was vested in the *giunta*, which was a court composed, in each province, of the prefect and certain assistants. A complaint continually heard about the judiciary as a whole was that it was too susceptible to influence on the part of the government. Judges could not be arbitrarily removed, but they could be summarily transferred, and threat of reassignment to an undesirable post seems usually to have sufficed as a means of controlling all but the most conscientious of those who wore the judicial robes.

LOCAL GOVERNMENT AND ADMINISTRATION

In local government again, French organization served as a model, both in the matter of areas and in the allocation of functions. Replacing older areas of various sorts, new units, in four grades, were provided for by the kingdom's founders: the province, the *circondaro*, the *mandamento*, and the commune. Of these, however, only the first and last had any considerable vitality; the others, corresponding respectively to the French *arrondissement* and canton, served only minor fiscal and judicial purposes.

Of provinces, corresponding to the French departments, there were most of the time 75, with populations averaging around 570,000. As in France, the chief authority in each was a centrally appointed prefect to whom it fell to head up provincial administration, and especially to bring the national government close home to the locality—never more than at election time. Of provincial autonomy, there was even less than in France, although, as there, an elective council shared control over highways, poor relief, and a few other matters. Communes numbered some 8,000, the majority being small towns or tiny villages with a bit of surrounding countryside. Each had (1) an elective council, meeting at least twice a year, and endowed with some authority over streets and highways, elementary education, poor relief, markets, police, and other matters, and (2) a *sindaco*, or mayor, chosen in all cases after 1896 by the council, yet serving almost equally with the prefect as a functionary of the

national government. In the commune, one found the principal historic focus of Italian political life. Elections often resolved themselves into furious battles; a demonstration, or even a riot, in the *piazza*, or public square, was the commonly accepted mode of ventilating grievances.[1]

QUIRINAL AND VATICAN

The unification of Italy solved numerous problems, but it created one new situation which long embarrassed and perplexed the civil authorities. Totally unreconciled to the government's occupation of Rome in 1870, the pope ceaselessly protested against the position into which this event had forced him. The government, it must be conceded, did its best in the interest of conciliation. Early in 1871, a comprehensive Law of Papal Guarantees undertook to assure the pope full sovereign rights on an equality with the king. Permanent and tax-free possession of the Vatican and Lateran palaces with all appurtenant buildings (including Saint Peter's and the villa of Castel Gandolfo) was conceded, and within these areas no government agent or dignitary was to set foot, much less exercise any form of control. An annual subsidy, too, of 3,225,000 lire ($645,000) was pledged, to compensate the Holy See for the loss of revenue caused by extinction of its temporal dominion. These and other concessions, however, were summarily rejected by the indignant pontiff, who chose, rather, to regard himself as a prisoner in the Vatican and refused so much as to set foot on soil controlled by the civil authorities. Moreover, he sought by successive decrees to restrict, and finally to prohibit, Catholics from voting and holding office under the government. As we shall see, this ban on political activity was in time removed. But until the advent of Fascism, direct and friendly relations between Quirinal and Vatican were never found possible.[2]

PRE-FASCIST PARTIES AND POLITICS

Successful operation of parliamentary government presupposes a system of nation-wide parties more or less accurately reflecting the divergences in political and economic views of

[1] For fuller accounts of the Italian governmental system as it stood on the eve of the Fascist régime, see F. A. Ogg, *The Governments of Europe* (rev. ed., 1920), Chap. xxix, and A. L. Lowell, *Governments and Parties in Continental Europe*, I, Chap. iii. H. R. Spencer, *The Governments and Politics of Italy* (Yonkers, 1932), is an excellent treatise describing the system as modified (to the date of publication) at the hands of the Fascists. The same is true of P. Chimienti, *Droit constitutionnel italien*, trans. into French by J. E. Grâa (Paris, 1932), except that this volume should be used with the fact in mind that it was prepared as a Fascist text-book.

[2] For fuller discussion, see F. M. Underwood, *United Italy* (London, 1912), Chaps. xi–xii.

the electorate. It is not surprising that pre-Fascist Italy developed no such system. The traditions of localism were too powerful, political experience was insufficient; the spirit of faction was too strong There was no lack of so-called parties, but as a rule they did not develop beyond mere personal followings, with platforms commonly vague and meaningless. Party discipline was notoriously lacking, and cabinet coalitions formed, dissolved, and re-formed with amazing frequency and facility. At no time did responsible party government in the English sense emerge, and save in exceptional instances, statesmanship was reduced to the exercise of a veiled dictatorship, depending for a day-to-day existence upon the adroit manipulation of coalition majorities in an atmosphere of intrigue, fraud, and violence. Deputies interested themselves chiefly in currying favor with their constituents by seeking and procuring appointments, pensions, and other benefits from the government; if these were forthcoming, the average member was willing enough to leave the shaping of national policies and programs to the ministers; if they were withheld, he was ready to help overthrow the ministry, so that he might try his fortunes with its successor. At best, the situation was a sordid one, going far toward explaining the generally low tone of the country's political life.

RIGHT AND LEFT AFTER 1870

From 1870, when unification was completed, to 1876, the nation's affairs were controlled by an ill-defined group of so-called Conservatives whose strength lay in Tuscany and the regions northward. During the next 20 years, the "Left," if one may so term it, was in the ascendancy. Its leaders—Depretis, Crispi, and others—were men of the south; and while the successive ministries ruled with the support of an incoherent group rather than of a party in any true sense, they succeeded in giving the nation's course a more democratic bent, and likewise a bolder slant in international policy. After 1896, the growing multiplicity of parties bore fruit in cabinets of amazingly composite character. The terms "Right" and "Left," as encountered in the party annals of the period must, however, be interpreted in a highly qualified sense. There was no genuine conservative party. The quarrel between Quirinal and Vatican had banished clerical elements from the political scene, and accordingly the party groups of which one hears were without exception more or less "liberal" Had they been compelled to face a well-organized and strongly entrenched conservative party, they might have left off their petty bickerings over local and personal issues and have formed a coherent

bloc concerned with national affairs; and in that case the later political history of the country might have been different.

RISE OF A SOCIALIST PARTY

For quite a long time, there was not even an organized Socialist party. After the seemingly inevitable struggle between elements favoring revolution and those disposed to bourgeois cooperation had passed its earlier stages, socialists of the latter stamp finally succeeded, in 1892, under the leadership of Filippo Turati, in founding an Italian Socialist party, which in the same year secured an opening wedge of parliamentary seats. Progress, however, was slow. In 1895, there were still only 12 Socialist deputies, a number hardly doubled in the following decade. Nevertheless, little by little, the movement gained momentum, and in the election of 1913 the party polled almost a million votes and seated 44 deputies—a quota significantly raised at the first post-war election, in 1919, to 156.

PARTICIPATION IN POLITICS FINALLY PERMITTED TO CATHOLICS

It was to be expected that penetration of the country by socialism on these lines would lead to a change in the attitude of the Holy See toward the participation of Catholics in political affairs. In 1905, Pope Piux X issued an encyclical which made it the duty of Catholics everywhere, Italy included, to share in the maintenance of social order and permitted, and even enjoined, that wherever it became necessary to do so they should take an active rôle in elections, and even stand for office. To be sure, the ban was lifted only in part. But, even so, important results followed. A Catholic party, entering the political arena with a distinctly anti-socialist platform, gained some 35 seats by 1913—a development which, of course, merely stimulated and intensified socialist opposition. Two months after the Armistice, the Vatican went farther by officially sanctioning the creation of a new party, the *Partito Popolari Italiano*, which, although by no means narrowly Catholic in its outlook and program, was organized and led by Don Luigi Sturzo, a Sicilian priest of exceptional vigor and capacity. Born amid the spiritual exaltation of the first months of restored peace, grounded upon principles of Christian ethics, and enlisting chiefly Catholic artisans and small landowners, the *Popolari*—the first genuine party that modern Italy had known, aside from the Socialists—proposed to unite "all men free and strong" in the task of perpetuating and enhancing social justice and freedom. The party was interested, also, in political reform on democratic lines—proportional representation, an elective Senate, woman suffrage,

reconstruction of the judiciary; and in the parliamentary election of the very year in which it was born it surprised the world by capturing a total of 101 seats in the Chamber. As noted above, however, the Socialists scored in the same election an even more impressive victory; and with Fascism fast coming over the horizon, the Popular party's moderate and well-reasoned program presently proved not sufficiently exciting for the times.[1]

[1] On the creation and early successes of the *Popolari*, see Sturzo's own account in his *Italy and Fascismo*, trans. by B B Carter (New York, 1926), 91–100. Political parties prior to the rise of Fascism are treated at some length in A. L. Lowell, *op cit.*, I, Chap iv, F. A. Ogg, *op cit.* (rev. ed., 1920), Chap. xxx, H. R. Spencer, *op cit*, Chaps. v–viii, and F. M Underwood, *United Italy*, Chaps. v–vi.

CHAPTER XLI

Fascism in Power—the Party

SAVE for the World War, Italian politics might have pursued its aimless course indefinitely, an apathetic people merely looking on while self-seeking politicians moved in circles. Of all the victor states, however, Italy was most severely shaken by the conflict, and it is in the setting of chaotic social and economic conditions produced by the War that the meteoric rise of Fascism to power, turning the country's political life into wholly new channels, must be viewed. As elsewhere, the first reaction to peace was one of exaltation and expectancy. To this succeeded, however—as the hard truths of the nation's impoverishment and exhaustion burned themselves into the public mind, and as disappointment followed disappointment at the Versailles Peace Conference—a deep and bitter disillusionment. An overwhelming majority of the people had been opposed to going into the War in the first place. Now it appeared that although 600,000 men had given their lives, a million more had suffered disablement, and twelve billion dollars had been spent, the country was to receive, not the large areas around the eastern Adriatic, in the Levant, and in Africa that had been expected, but only the Trentino, southern Tyrol, and a limited foothold in Dalmatia. To be sure, this would carry the kingdom beyond its ethnic limits. But the dream of empire on a French or British scale was shattered Domestic conditions also were most depressing. National and local debts were mountain-high, deficits growing, taxes crushingly heavy. The lira was falling and living costs rising. Swollen war-time industries were in heavy slump; unemployment was mounting, many branches of economic life were paralyzed. In place of the glittering promises that had been held out, there remained only tawdry reality. Nor could there be confidence that a government which had failed humiliatingly at the peace table would prove any more successful in handling the domestic situation.

POST-WAR DISILLUSIONMENT AND DISTRESS

If the war whetted nationalism, it also intensified class consciousness, especially in the industrialized areas centering in Milan, Turin, and other northern cities. Between 1914 and 1919, trade union membership

SOCIALIST "DIRECT ACTION"

rose from half a million to over two millions, and adherents of the Socialist party from 50,000 to over 200,000; and, notwithstanding the vigor of the new Popular party (appealing primarily to the Catholic peasantry of the agricultural south) in behalf of a moderate program of political and social reform, the most dynamic force in post-war politics before the emergence of Fascism was the Socialists, who, as we have seen, won in the elections of 1919 the surprising total of 156 seats. As in Germany and other countries, there were socialists of many stripes, and the more "evolutionary" element occupied ground to some extent in common with the *Popolari*. The bulk of the party, however, having never given more than grudging lip service to Italy's participation in the War, swung far to the left after the fighting was over, and, encouraged from Moscow, threatened to capture control of the country in behalf of something not far short of bolshevism. Abetted by radical trade unions, Socialist agitators organized strikes which paralyzed such industry as remained. Factories were seized and held, even though lack of capital and of technical experts prevented running them. The government of commune after commune was taken over by "direct action," and municipal schemes and enterprises were launched regardless of poor planning and of expense which a tax-ridden citizenry could ill afford. Arms were available, and open revolution might have been attempted. That matters did not go so far was due to no strong position taken by the government, which from first to last remained lethargic, but only to utter lack of military organization and leadership, reinforced by sharp differences of opinion and policy among the many groups and wings loosely associated with the Socialist movement. Late in 1920, the factories were restored to their owners, and in 1921 the Socialist party congress refused to take a stand for revolution—to the disgust of a communist wing which thereupon broke away and from then on shaped its course entirely under instructions from the Third International. But meanwhile, for nearly two years after the Armistice, Socialist terrorism kept the country in uproar and many people believed a bolshevist *coup* to be only a question of time. "If," pertinently remarks a recent writer, "post-war Italy had possessed a Socialist leader of the rank of Mussolini, who knows what the face of Europe might be now?" [1]

HOW MATTERS LOOKED TO THE RETURNED SOLDIER

Demobilized soldiers were aghast at the situation. It was not merely that few could find employment, or that the promised partitioning of the *latifundia* had not taken place. Rather,

[1] W. Elwin, *Fascism at Work* (London, 1934), 19

the feeling was that they had returned to a topsy-turvy world in which all that had inspired them seemed irretrievably lost, and, worst of all, deliberately repudiated. After the ordered discipline of military life, the laxity and misgovernment of civil administrations seemed all the more glaring. Profiteers were in power. Socialists who had shunned the war were occupying lucrative posts, experimenting recklessly with taxes wrung from toil-worn peasants, and joining with communists in fomenting strikes ordered from Russia. Instead of respect and honor, the veterans encountered only scorn and contumely. "War medals were snatched from the breasts of those that dared to wear them; war-disabled men were jostled and insulted in the streets; officers were pelted with mud, and, appealing to headquarters, were advised by the government not to wear their uniforms in public."[1] Worst of all, the government itself, as has been observed, was vacillating and impotent. The old policies of political manipulation that had so well served Premier Giolitti during a long if undistinguished career were patently ill-adapted for dealing with the problems created by a psychology of disillusionment and defeat. Moreover, the government, almost equally with the Socialists, had yielded to a European, non-nationalistic attitude on questions of foreign policy—a course which seemed to the soldiers to invite only further insults and continued lack of prestige and power.

BENITO MUSSOLINI

It was in soil such as this that the seeds of Fascism grew; and the man who chiefly planted and harvested was Benito Mussolini. Born in 1883 of a poor family, largely deficient in formal education but endowed with a keen mind, and above all a man of action, this most towering of all recent European dictators save Hitler and Stalin rose in the turbulent ranks of Italian socialism to the editorship of the party organ, *Avanti*, in 1912. Identified, indeed, with the extremer wing of revolutionary syndicalists which subscribed to the doctrines expounded by the French writer Sorel, he had been active in forming labor unions and fomenting strikes, and on plenty of occasions had been in trouble with the authorities. In common with his fellow-partisans, he at first opposed Italy's entrance into the World War. But months before the government finally decided to break with the historic Triple Alliance and join fortunes with the Entente Powers (May, 1915), he renounced the Socialist attitude, gave up his editorship of *Avanti*, founded (in December, 1914) the heavily subsidized journal *Popolo d'Italia*, which to this day remains his govern-

[1] H E Goad. *The Making of the Corporate State* (London, 1932), 43

ment's principal mouthpiece, and, promptly expelled from his party, started upon the independent career which in eight years brought him to dictatorial power in the Palazzo Viminale. In the army from November, 1915, to January, 1917, he witnessed discipline, loyalty, and morale, and meditated upon their political implications, convalescing in a hospital during most of 1917, he further matured his ideas and plans of action. Resuming his editorship, he thundered against the ineptitude of the government, preached that the chief condition of success in any undertaking is a will to victory, and sounded notes of protest and aspiration portending desperate adventures. For months after the War—as late, indeed, as 1921—he still reckoned himself a socialist; in 1919, he is found promoting labor unions, encouraging strikes, declaring for the expropriation of land, and generally championing the working classes, very much as in the old days. The party, however, had outlawed him and had no mind to take him back—which meant just one thing, *i.e.*, that the road to power lay over its prostrate form; and soon was begun the relentless warfare upon it, on the ostensible grounds of its timidity, futility, and lack of patriotism, which in time brought it to its death. The working classes were to be saved from their false leaders. In a different direction, the failure at Versailles was exploited, D'Annunzio's adventure in Fiume extolled, and a bold nationalism proclaimed. By one of the most extraordinary executions of right-about-face on record, Mussolini the syndicalist became Mussolini the fascist.[1]

THE BEGINNINGS OF FASCISM

"*Fasci* [or groups] for revolutionary action," with Mussolini participating, had agitated for the country's entrance into the war in 1914–15. In March, 1919, five days after an impressive bolshevik demonstration in the streets of the city, Mussolini convoked a group of kindred spirits at Milan and formed an organization—a *fascio di combattimento* ("fighting band")—which introduced the type of local unit chiefly employed in carrying out the fascist conquest of the country. The returned soldier seemed to be the organization's principal object of solicitude; but an intense nationalism was voiced, and the way was left open for developments in other directions. For a good while, the enterprise gave little promise. Additional *fasci* were established here and there, but in the parliamentary elections of November, raising Socialist representation in the Chamber to new levels and yielding the *Popolari* quite unexpected strength, not a candidate

[1] The best account of Mussolini's career to the time (1912) when he assumed the editorship of *Avanti* is G. Megaro, *Mussolini in the Making* (Boston, 1938), and the writers and teachers who influenced him are commented on in W. K. Stewart, "The Mentors of Mussolini," *Amer. Polit Sci. Rev.*, Nov., 1928

bearing a fascist label was successful; Mussolini himself polled less than one-eightieth of the votes in a Milan district carried by the Socialist leader Turati. All told, barely 17,000 people had attached themselves to the movement—principally former revolutionary syndicalists, demobilized officers and soldiers, hot-headed youth, and sheer adventurers; and it is small wonder that in summing up the year 1919 in an article, Mussolini took a gloomy view of the situation.

Further reflection brought him to a momentous decision. Up to now, he had been in an equivocal position—posing as a socialist, yet repudiated by the party (which he accused of being misled and reactionary) and distrusted by the masses, without having convinced other classes of people that he was more than an irresponsible trouble-maker. The 1919 election, however, revealed to him that he would never attain power by means of a revolution of the Left; as his friend Rossi wrote in the *Popolo d'Italia*, the workers and the Socialist party formed "one integral unity," and further compromises and illusions were useless. For one bent indomitably on control, the logic of the situation was obvious. If the Socialist party would not see the light and the workers would not embrace the more virile leadership offered them, a following should be sought in different quarters. No longer, therefore, did Mussolini advertise himself as the savior of the laboring masses, no longer did he court the ungrateful Socialist party. To be sure, the fiction was maintained that the party, not Mussolini, was apostate; in a rhetorical flourish in 1920, the latter declared himself the only true socialist that Italy had known in the past five years. But the middle and upper social classes to which appeal was thenceforth directed discounted such effusions, recognizing that attack upon radicalism would be more effective if masked beneath socialistic catchwords than if organized openly from the Right.

A change of front once made, the tide of fortune turned rapidly. Fear of approaching socialism—perchance bolshevism—after the 1919 elections rendered many elements of the nation highly susceptible: landlords and capitalists who stood to lose everything if the country went the way of Russia, and who now came forward with substantial subsidies as well as with moral support; owners of small properties and persons engaged in small-scale industry and agriculture; retired and active soldiers who resented socialist abuse; nationalists who disliked equally socialist pacifism, communist internationalism, and the supineness of the existing government, university graduates, professional men, and others who felt it high time for a housecleaning at Rome, to be followed by the establishment of a political régime that would maintain law and order at home and com-

mand respect abroad.[1] Drawing from such sources, the movement was going forward rapidly before 1920 was far advanced. The Socialists themselves played directly into Mussolini's hands by turning the country, as related above, into a scene of industrial and social turmoil. Communists and anarchists also did their share to inspire alarm. By May, 1920, the number of avowed Fascists had risen to 30,000; by February, 1921, to 100,000.

THE PARTY FOUNDED

For two years and more, the Fascists moved steadily onward to power. New *fasci* were organized throughout the land, most numerously in the north; *squadristi* were drilled on military lines, and indeed supplied with equipment by the national army; with the government and local police merely looking on, campaigns of organized terrorism were launched (castor oil, clubs, and guns being met with similar weapons in Socialist hands); anti-Fascists were assassinated; systematic printed and spoken propaganda was directed to convincing the people that fascism alone could redeem the country from its helplessness and save it from bolshevism; supporters of the cause were edged into office until the public services were honeycombed. Strangely optimistic, the Giolitti government ordered a national election for May, 1921, in the hope that the Socialists would recede in strength and the general situation quiet down. In point of fact, despite the Communist secession of the previous January, the Socialist popular vote proved almost as large as in 1919; while the Fascists, actively collaborating with the Nationalist party, elected 35 deputies, among them Mussolini.[2] Impressed by the showing of both the Socialists and the *Popolari*, Mussolini for a time inclined to a policy of cooperation with them on parliamentary lines; three months after the elections, a "pact of pacification" was actually concluded with the Socialists. The leaders of neither party to the agreement, however, were able to restrain their followers from acts of violence; and when it became apparent that the financial and military forces back of Fascism were prepared for a fight to a finish, Mussolini discarded all hesitancy and ordered full steam ahead. The question of transforming the movement into a party stirred wide differences of opinion in the ranks. But eventually Mussolini had his way, and in November a largely attended congress—representing, it was claimed, 320,000

[1] Speaking broadly, Fascism's support was drawn from sources similar to those contributing chiefly to National Socialist strength in Germany. The middle classes and rural peasantry were largely behind the movement, industrial workers generally held aloof. See p. 715 above

[2] Owing to a change in the electoral system, the Socialists secured only 123 seats. The *Popolari* won 107, the Communists, 16, the Nationalists, 10. The remainder went to Democrats and Liberals of various groups.

adherents—was assembled in Rome and the *Partito Nazionale Fascista*, or National Fascist party, formally established. The *fasces*, or bundle of rods surrounding a battle-axe, carried by the Roman lictors as a symbol of national unity and strength, was adopted as an emblem, the black shirt as a uniform, *Giovinezza* ("Youth")—taken over from the *Arditi*, or shock troops, during the World War—as the official song.

THE FASCISTS COME TO POWER

With a revamped and strengthened machine at their command, Mussolini and his cohorts were now ready for anything. Socialism was manifestly too strong to be wiped out by ordinary political methods, cooperation had been proved impossible; other means must, accordingly, be employed; and the campaign of terrorism and lawlessness, never wholly suspended, was renewed with increased vigor and effectiveness. As late as September, 1922, Mussolini personally would still have been willing, under suitable guarantees, to form a coalition with the parties of the Left. Once more, however, his financial and military backers asserted themselves—this time not only by vetoing any compromise, but by forcing a decision that, since the government might not always be as supine as now or the friends of democracy as badly frightened and divided, the moment for a supreme bid for control had arrived. Already, Mussolini had demanded of the vacillating Facta ministry that Parliament be dissolved, new elections held, and five major cabinet posts turned over to the Fascists. Already, the government's equivocation in the face of the crisis had pronounced its doom.

THE MARCH ON ROME AND ITS AFTERMATH

Force, declared Mussolini to a great gathering of the faithful in Naples, would have to be used, "the moment has arrived . . . when the arrow must leave the bow, or the cord, too far stretched, will break." Hurrying to the north, where Fascist legions were swiftly taking over cities, railways, and means of communication, the chief directed the famous March on Rome, *i.e.*, the convergence of Fascist bands from all over the country upon the capital—marchers by the thousand, and then tens of thousands, until by the last days of October the city and its environs teemed with them. Summoning belated and now futile courage, the cabinet planned to declare a state of siege. The realities of the situation, however—chiefly, that while the army had sufficient power to disperse the invaders if it should choose to do so, disaffection in the high command would probably paralyze any effort undertaken—were discerned more clearly by the king than by his ministers; and, wisely determining that blood should not be shed in an attempt that almost certainly

would fail, he refused to sign the necessary decree. Instead, Mussolini was called to the capital, where by royal request he formed a ministry—not, to be sure, one composed wholly, or even mainly, of Fascists (they still had at the time only 35 seats in the Chamber), but one of the usual coalition variety, containing in this case four Fascists and 10 Nationalists, Liberals, and other party men whose principal bond of union was their common antipathy toward socialism and communism. "Tomorrow," the chief had said as he departed from Milan, "Italy will have, not a ministry, but a government." Soon, he might have added, she would have a dictatorship; for that was what the *coup d'état* clearly portended. With the Fascist grip upon the situation gradually tightened, non-Fascist cabinet members were one by one ejected, a vote of virtually unlimited power for a year was secured from a subdued Parliament (only the Socialists opposing), a new Fascist militia was assigned extensive police duties, and the country was pointedly reminded that "if consent should fail, there was still force." The economic situation had improved, and the nation seemed at last on the road to recovery. Chronic parliamentary weakness and crisis had, however, borne their bitter fruit. A determined minority, energetically and capably led, had pushed its way to power over the prostrate form of a divided and spiritless democracy.[1]

The régime thus dramatically inaugurated was widely expected to prove of brief duration, particularly after moderate elements, alienated by the methods pursued, began withdrawing their support. The Fascists soon demonstrated, however, that they were strong enough to stay in power without such support; and in point of fact, after nearly two decades, the régime still survives, and not only survives but continues advancing from stage to stage in rebuilding the nation according to its policies and aims and in winning for it a more influential, if not a more respected, position in the family of nations.

FASCIST STRESS UPON ACTION RATHER THAN THEORY

Bolshevism in Russia had from the first a reasoned theory of the state and of society, grounded upon the doctrines of Karl Marx and elaborated painstakingly in the writings of Nico-

[1] On the beginnings of the Fascist régime, see H R Spencer, *op cit*, Chap. IV, H. Finer, *Mussolini's Italy* (New York, 1935), Chaps II–V, H W. Schneider, *Making the Fascist State* (New York, 1928), Chaps. I–II, P. Gorgolini, *The Fascist Movement in Italian Life*, trans. by M. D. Petre (Boston, 1923), A. Rossi, *The Rise of Italian Fascism* (London, 1938), for Mussolini's rôle, B. Mussolini, *My Autobiography* (New York, 1928), and for a hostile view, Don Luigi Sturzo, *Italy and Fascismo*, cited previously. The technique of the Fascist revolution is interpreted in C. Malaparte, *Coup d'état* (New York, 1932), Chap. VII. An extended list of references will be found in Spencer, *op. cit.*, 294–297.

lai Lenin. On the other hand, fascism, wherever appearing, has started only with certain large objectives, has addressed itself to attaining these by positive action, and has provided itself with a philosophy only afterwards, if at all. Certainly this is true of Italian fascism, which in its earliest stages had not even a formulated program such as the National Socialists of Germany early acquired in the Twenty-five Points associated with the name of Gottfried Feder.[1] If at the outset there can be said to have been a program at all, it was simply that of capturing power. "Our program," declared Mussolini shortly before the March on Rome, "is simple: we wish to govern Italy. They ask us for programs, but there are already too many. It is not programs that are wanting for the salvation of Italy, but men and will power." [2] And again: "Fascism is based on reality, bolshevism is based on theory . . . We want to be definite and real. We want to come out of the cloud of discussion and theory. My program . . . is action, not talk." [3]

Saddled in the beginning with no creed, and repudiating any notion that action must await the development of one, the movement, to be sure, eventually acquired a body of theoretical assumptions and formulated dogmas (very much as did National Socialism in Germany when Hitler's *Mein Kampf* was published in 1924), as early as 1926, one of the leader's principal counsellors, the former Nationalist Alfredo Rocco, was able to publish a pamphlet entitled *The Political Doctrine of Fascism;* and in endorsing it, Mussolini himself could say: "Fascism has a doctrine, or, if you will, a particular philosophy with regard to all the questions which beset the human mind today." Derived from experience, however, rather than from reasoning, this doctrine, or philosophy, has at all times been highly changeable and is today to be regarded as in no sense fixed and static; nowhere can it be found in a "bible," comparable with *Das Kapital* or *Mein Kampf* Startling shifts of attitude, indeed, marked the earlier stages of its development, as the leader, in his drive for power, came up against situation after situation demanding quick maneuvering. Originally syndicalist and anti-capitalist, Mussolini grew tolerant of capitalism and drew from it his most powerful support, even though support inspired mainly by the capitalists' fear of something worse. Once loudly proclaiming himself a republican, he accepted almost overnight the view that kingship in Italy is a useful symbol of that na-

[1] See pp. 713–714 above.
[2] Speech at Udine, September 20, 1922.
[3] See other expressions in B Q. di San Severino (ed.), *Mussolini as Revealed in His Political Speeches* (London, 1923).

tional unity for which Fascism itself so preëminently stands.[1] From being hostile to the army and militarism, he became an arch-exponent of the doctrine of force. From internationalist, he became a rabid nationalist. Starting as a ferocious anti-clerical, he discovered that his cause had much in common with the church, and ended by making religious instruction compulsory in public schools. Once a champion of popular sovereignty, freedom of opinion and propaganda, and rigid limitation upon executive powers, he later was found denying the right of the people to rule themselves through democratic procedures, repressing every manifestation of anti-fascist thought and action, and exalting executive authority to the level of unabashed dictatorship. Plenty of other startling changes of front could be cited, inevitably forcing the conclusion that Mussolini himself—and by the same token the movement which he created and dominated—has at all stages been completely and frankly opportunistic.

CARDINAL FEATURES OF FASCIST DOCTRINE:

THE STATE AND GOVERNMENT

Allowing for the fact that the régime is still eminently practical and empirical (probably the least doctrinaire in all history), and on that account perfectly capable of re-charting its course without notice, some attempt may be made to summarize the ideas or concepts which animate it after a decade and a half of pragmatic development.[2] (1) Basic to all else is the "totalitarian" concept of the state as the supreme institution—the absolute beside which all else is relative—and of all human affairs as properly subject to domination by it: "all in the state, noth-

[1] It is reasonable to suppose that King Victor Emmanuel's attitude at the time of the March on Rome contributed to this change of heart.

[2] Naturally, the most important sources of information on the matter are the speeches and writings of Mussolini himself, including an article contributed in 1932 to the *Enciclopedia Italiana* and republished, in translation, by J. Soames as "The Political and Social Doctrine of Fascism" in *Polit. Quar.*, July–Sept., 1933, a volume entitled *Fascist Doctrine and Institutions* (Rome, 1935), and the collection of speeches and writings of the period 1914–23 assembled and edited by San Severino and cited above. Other Fascist expositions are A. Rocco, "The Political Doctrine of Fascism," trans. by Bigongiari in *Internat. Conciliation*, No. 223 (New York, 1926); G. Gentile, "The Philosophic Basis of Fascism," *Foreign Affairs*, Jan., 1928; and C. Gini, "The Scientific Basis of Fascism," *Polit. Sci Quar.*, Mar., 1927 The sources of some of *Il Duce's* ideas are traced in W. K. Stewart, "The Mentors of Mussolini," *Amer. Polit. Sci. Rev.*, Nov., 1928, and G. A. Borgese, "The Intellectual Origins of Fascism," *Social Research*, Nov., 1934, and convenient discussions will be found in H. A. Steiner, *Government in Fascist Italy* (New York, 1938), Chap. III, H. Finer, *Mussolini's Italy*, Chaps VI–VII; F. W. Coker, *Recent Political Thought*, Chap XVII, W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), Chap. XI; and M Palmieri, *The Philosophy of Fascism* (Chicago, 1936). See also a collection of documents in H. W. Schneider, *Making the Fascist State* (New York, 1928), Appendix.

ing outside the state, nothing against the state." [1] A great spiritual entity carrying on unbrokenly from generation to generation, the state has the supreme task of protecting and extending the national interests, and in doing this it may sacrifice or defy with impunity the interests of individuals, classes, and organizations. Duty and discipline are the watchwords of the citizen; authority and order, those of the state. (2) The state, thus glorified, is (for Italy) equated with the existing, *i.e.*, the Fascist, government. In this government, it is taken as axiomatic that a few persons, and even one, may better represent the nation than any larger number of individuals in the mass, and that it is the right and duty of even the *one* to govern the rest—if necessary, against their will. The state is the final authority; the government voices the state's *will; Il Duce* speaks the first and last word for the government; to all intents and purposes, *Il Duce* is the state.[2] (3) Popular sovereignty, democracy, majority rule, minority representation, bills of rights, separation of powers—these are outworn dogmas having no place in a virile and effective system of government. The aim is, rather, "to displace the enfeebling creeds of individual equality, freedom, and right" by Fascism's own "orderly doctrine of an organic, hierarchically constituted nation, whose few virile and discerning citizens hold the multitude of commonplace individuals in subservience to the realization of destinies more important and permanent than their limited hopes and beliefs can contemplate." [3] Democracy is therefore definitely ruled out, and liberty substantially so; *authority* alone remains.

WAR, NATIONALISM, RACE, IMPERIALISM

(4) No government, says Mussolini, has ever been able to dispense with force; and while some attempt is made to convey the impression that for Fascists, force is spiritual rather than physical, the entire history of the Fascist rise to power, and of Fascist government afterwards, warrants including in any list of Fascist doctrines that of violence. Upon occasion, indeed, Mussolini and other Fascists have explicitly defended violence as a means of achieving political ends. (5) From this, it is but a step to the doctrine of war. Pacifism is repudiated, perpetual peace deprecated as depressing and as negativing the fundamental virtues of man. "War alone," Mussolini has asserted, "brings up to its highest tension all human energy and puts the stamp of

[1] This is a far cry from Mussolini's "Down with the state in all its forms and incarnations," voiced in *Popolo d'Italia*, Apr. 6, 1920.

[2] "Whoever governs," Mussolini himself has said, "is the state." "*Il Duce*," meaning "the Leader," is the title by which Mussolini is most commonly known. On his present official titles, see p. 838 below.

[3] T. W. Colter, *Recent Political Thought*, 476

nobility upon the peoples who have the courage to meet it." (6) Communism envisages a classless society devoid of national or racial frontiers except such as may be maintained merely for purposes of administrative convenience, but Fascism condemns all such cosmopolitanism and is frankly and aggressively nationalist. "We commence," says Mussolini, "with the concept of the nation. . . . We are therefore antithetic to all the internationalisms." Viewing the Italian nation as an organism—"a moral, political, and economic unity, which realizes itself in the Fascist state—Italian Fascism nevertheless differs from German National Socialism in refusing to attach much importance to internal differences of race. There are no biologically "pure" races, says Mussolini; and anyway race is mere feeling, not reality.[1] (7) Closely connected with the doctrines of war and nationalism is that of imperialism. "Imperialism," we are assured by *Il Duce*, "is the eternal and immutable law of life. It is, at bottom, nothing more than the need, the desire, and the will to expansion which every individual, every live and vital people, possesses." It may be "democratic, pacific, economic, spiritual," as well as "aristocratic and military"; it may seek expansion by persuasion no less than by force—by quiet encroachments, or even by mere denial of opportunity to others, as well as by armed demonstrations in foreign parts, *e.g.*, Ethiopia. But it is a prime law of national life. (8) Carrying to its logical conclusion their party's emphasis upon tradition, the Fascists systematically exploit the past, dressing up history so as to draw from it powerful emotional support for the régime. "Rome," says Mussolini, "is our point of departure and of reference: it is our symbol, or if you like, it is our myth. We dream of a Roman Italy"—also, it might have been added, of the Mediterranean as a Roman sea and of empire in Africa and the Near East as a Caesar might have envisaged it.

ECONOMIC AND SOCIAL MATTERS

(9) Politics and economics in the totalitarian state are inseparable; Italy must be a unit economically as well as politically, and all economic activity must serve the higher ends of the state. Far from originating in theft, as the socialists say, private property is the result of toil and thrift; and it must be maintained, if for no other reason, because economic self-interest is the most powerful incentive to productive activity. The self-interest of the property-owner must at all times,

[1] Close association with Nazi Germany, as well as a desire to curry favor with the Arabs, has, however, in later days influenced the Fascist leadership to manifest considerable hostility toward "non-Aryans," especially Jews. In 1938, for example, marriages between Italians and non-Aryans were prohibited. See J. Starr, "Italy's [illegible]," *Jewish Social Studies*, Jan., 1940.

however, be subject to whatever regulation is required by the *higher* self-interest of the nation; the state has a right to step in at any moment and direct private initiative into channels which it considers desirable, or to supply the deficiency when private initiative falters. Labor is to be regimented in Fascist *syndicats* or unions; strikes and lockouts are to be prevented as tending to frustrate the supreme end of the economic system, *i.e.*, the increase of national wealth by production; the rural community being the mainstay of the state, land reclamation, peasant ownership, and cultivation aimed at national self-sufficiency are placed high in the list of public policies; and a new order is envisaged in which the distribution of labor and capital, as well as the system of production, shall be planned in advance and as a whole "on the basis of a knowledge of every need." (10) Finally may be mentioned the fact that the strong doctrines enumerated and the generally authoritarian nature of the régime do not imply any disregard for the material and social well-being of the people. Questioned on this point, Fascist spokesmen would be quick to contend that the ultimate objective is a well-ordered society of industrious, prosperous, and contented men and women, and, as a competent observer has pointed out, the great undertakings of the régime—in the domains of social insurance, public health, labor legislation, and other social services—have been precisely those which English socialists and Tory democrats would applaud.[1] How effectively the social purposes avowed can be promoted by a government which admits the masses to no share in determining public policy is a matter of grave doubt. But the present point is that Fascism no longer lacks a social program.

THE FASCIST PARTY

Contrary to the desire of many of his supporters, Mussolini, in the autumn of 1921, engineered the establishment of a *Partito Nazionale Fascista*, or Fascist party. To be sure, he had declared that all parties in Italy "must end, must fall", and all that had come down from pre-Fascist days did indeed disappear, even before abolished officially in 1926. To be sure, too, a Fascist party could not be, and certainly was not designed to be, a party in the usual sense of a politically organized segment of the body politic competing for office and power with other similar organizations. In the Fascist conception, what existed first was a "movement"; to achieve its objects (one of which was to suppress parties), the movement took on the name, form, and technique of a party; in turn, the party became inextricably interlocked with the govern-

[1] H Finer, *Mussolini's Italy*, 183.

ment—an organ of the state; and the ultimate product was what is known in general as the "régime." As late as 1929, leading Fascists, considering that the new so-called party had served its purpose in consolidating the revolution, were ready to see it dissolved, or at all events converted from a political into a merely "cultural" institution. To Mussolini, however, the party had become the "capillary organization of the régime—so indispensable that if it did not exist it would have to be invented"—as indeed it had been. From first to last, it has been a major instrumentality of power, lending the régime some appearance of a popular basis, yet serving all necessary purposes of autocracy.

THE PARTY AND THE STATE

So vital is the relation between the party and the state that a further word of comment on the matter is required. At no single time has this relation been succinctly and categorically defined; rather, it has been a matter of development through successive stages, and as it stands today is to be deduced from somewhat scattered evidence. Following the analysis of a recent writer, in the first stage, from 1922 to 1925, the state appeared to take no official cognizance of the party; opposition groups were still represented in the cabinet and in Parliament, and the Fascist cause was carried forward through agencies and means effective enough, but devoid of legal or constitutional basis. A second stage, from 1925 to 1929, saw responsible, parliamentary government formally abandoned and the Fascist party emerge from the background into a position where local *fasci* and provincial fascist federations became juridical persons and the party Grand Council was by law (in 1928) given the function of preparing electoral lists and recognized as an organ of the state. In the third and final period, from 1929 to the present, the internal organization and discipline of the party became matters of public law, the party national secretary was made appointive by royal decree and in 1937 given the status of "minister," and the third and fourth of the party's successive "statutes," or constitutions, *i.e.*, those of 1929 and 1932, were likewise promulgated by decree from the Quirinal. In the outcome, the party —described in the 1932 statute as "a civil militia under the order of the Leader in the service of the Fascist state"—became as truly an organ of the state as is the Ministry of the Interior, or even the king himself. In a famous decision (in the Maddalena case) in 1932, the highest court of the realm recognized members of the party official hierarchy as having the status of *public officers.*[1]

[1] H. A. Steiner, "The Constitutional Position of the *Partito Nazionale Fascista*," *Amer. Polit. Sci. Rev.*, Apr., 1937.

PARTY MEMBERSHIP

In the early years of the party, virtually anybody who desired to join was welcomed, and the local secretaries who rounded up the largest numbers of recruits were rewarded with the heartiest commendation. After 1924–25, however, the rolls began to be purged of slackers and hangers-on and, under stern injunctions from *Il Duce*, applicants were scrutinized more closely with respect to their earnestness and loyalty. In 1927, indeed, the policy was introduced of admitting to the party only young people who had received training in the youth organizations sponsored by the party, *i.e.*, the Balilla,[1] for boys between 8 and 14 years of age, and the *Avanguardia* ("Advance Guard"), for those between 14 and 18. Until 1930, the recruits were *avanguardisti*, admitted at 18; after that, they were drawn, at the age of 21, from a new organization, the *Giovine Fascisti* ("Young Fascists"), maintained for youths between 18 and 21.[2] There were always elements in the party, however, that favored a more liberal policy, with a view to progressive fusing of the party with the nation; and this influence, together with the outlawing of all other parties, led in 1932 to adoption of a more receptive attitude: admissions from outside the junior groups once more became possible, and have since continued so, even though under carefully guarded conditions. To this day, the main accessions to the party take place on the annual "day of levy," April 21, when youth who have reached the age limit for their respective organizations are "graduated" into the next organization above—the young men of 21 into the party. But recruits are received sparingly also from the outside. All are required, upon admission, to take the oath: "In the name of God and of Italy, I swear that I will obey the orders of the Leader without questioning, that I will serve the cause of the Fascist Revolution with all my powers and if necessary with my blood."

Figures purporting to show the strength of the party are apt to be confusing because of being computed on differing bases. Sometimes only the actual members of the party in the strictest sense are counted in, sometimes the members also of auxiliary organizations Thus when, in the autumn of 1935, the *bona fide* members (all, of course, adult males) numbered 1,375,714, various women's and youth organizations, properly reckoned as party "forces," had 1,579,232 names on their rolls, and children's training organizations a total of more than three millions—figures which are not greatly changed today. In a total national population of some 41,000,000,

[1] So called in honor of a Genoese lad who, in 1746, touched off a patriotic rebellion in northern Italy by hurling a stone at some Austrian police.

[2] There are parallel organizations for girls, but not leading to membership in the party.

the party membership proper is not overwhelming. But of course it could have been made far larger if less rigidly selective procedures had prevailed. Motives for joining the party vary all the way from sincere attachment to its principles and program to the practical consideration that for professional, and many other, people it is better to be in than out, and the even more practical circumstance that the party affords the only gateway to offices, honors, and other perquisites and benefits. Party members accused of any of a long list of offenses may be brought before a disciplinary tribunal and, if found at fault, admonished, suspended, or expelled, according to the gravity of their dereliction. At times, there has been a general combing over of the lists, with a view to wholesale purging of the disloyal or otherwise unfit.

PARTY ORGANIZATION: An earlier nondescript association of fascist bands has through the years been transformed into an integrated and disciplined party, and it goes without saying that there has been a corresponding development of organization and machinery. One looking for an authoritative indication of what the mechanism now is will find it in the most recently issued statute, or constitution, of the party, dating from 1932, tenth anniversary of the March on Rome.[1] Structurally, the party consists of some 10,000 local lodges or chapters, *fasci di combattimento*, formed in the communes on authority of the secretary of the national party, and each a nucleus around which are grouped auxiliary youth and women's units. The basic *fasci*, in turn, are organized into provincial federations, each with a secretary, appointed by *Il Duce* on nomination of the national secretary; and guidance and control are supplied from the national party authorities mainly through the medium of these provincial organizations.

THE "LEADER" Turning to the party statute for information on the national authorities and their functions, one is struck first of all by the absence of any article or section devoted to the personage known to be far and away the most important of all, *i.e.*, the Leader; only scattered allusions to him appear. The explanation is that whereas the statute of 1929 included *Il Duce* in the party hierarchy and undertook to define his position along with that of the other officials and bodies, the Leader was by 1932 regarded as outside and above the hierarchy—so supreme that his functions were not to be defined, but only those of the various cogs in the machine which it was his right to drive at will. Whether as *Duce* in party

[1] For an English translation of this document, see W. E. Rappard *et al*, *Source Book*, Pt. III, 17–31.

affairs or as head (*Capo del Governo*) in government affairs, Mussolini is dictator.[1]

THE HIERARCHY

Next to the Leader stands the "secretary of the National Fascist party," appointed for a three-year term by royal decree on nomination of the Leader and with approval of the Grand Council. Enjoying the status of a minister and entitled to participate in cabinet meetings, serving as secretary to the Grand Council, and endowed with broad powers of control over subordinate party machinery in all of its ramifications, this hard-worked official directs, or is an *ex officio* member of, more secretariats, associations, and other agencies than it would be worth while to enumerate here. Below him, the party hierarchy and "organs" continue with a National Directory, a small deliberative body (13 members since 1939) which helps in the formulation of policies and "assists" the government; a relatively unimportant National Council, meeting once a year and bringing together (since 1938) all members of the National Directory, the 94 federal secretaries of the provincial organizations, and a number of other party functionaries; and other agencies of sundry forms and functions.

THE GRAND COUNCIL OF FASCISM

Most important of all the organs associated with *Il Duce* in carrying on the affairs of both party and state is the Grand Council of Fascism, indeed, if the Leader is forced from his purposes by any influence at all, it is most likely to be that exerted by this body. Once larger, the Grand Council has come to consist of from 20 to 25 persons, who, apart from the Leader as president, fall into three classes: (1) the Quadrumvirs of the March on Rome, honored with life membership because of their past services;[2] (2) various persons belonging *ex officiis* and for as long as they retain their offices, *e.g.*, the president of the Senate, several cabinet ministers, the national secretary of the party, the presidents of the national confederations of industry and agriculture, and (3) varying numbers of persons appointed for three years by the prime minister (who is *Il Duce*) from among those who have "deserved well of the nation and the cause of the Fascist revolution." Even before the party as a whole developed into an organ of the state, the Grand Council became such—by formal decree in 1928, when, to other public functions assigned it was added that of making up the list of candidates to be submitted to the voters at parliamentary elections. Additional functions possessed today include those of present-

[1] "Having created the Fascist party," says Mussolini, "I have always dominated it." *My Autobiography*, 296. On the title *Capo del Governo*, see p. 838 below.

[2] One of the original four died a few years ago

ing to the king the names of persons proposed for vacant positions in the ministry (including the prime ministership [1]); advising the *Capo del Governo* ("head of the government"), who of course is also *Il Duce*, on political, economic, and social questions; and approving or amending bills of constitutional significance, decrees of the government, and treaties providing for gains or losses of territory. Mention of these broad powers suggests how truly the Council is an organ of government as well as of party; indeed, as such an organ it has far greater importance than the Senate, the new Fascist and Corporative Council, or any other strictly governmental authority save only the prime minister, or *Capo del Governo*. The broad and undefined powers of this last-mentioned official, not even the Council is permitted to curtail. But the body's rather frequent and strictly private meetings, devoted primarily to hearing reports from the prime minister and the national party secretary, may and do become occasions for earnest discussion of matters brought under review; and since even a dictator cannot afford to flout his closest associates and advisers, it is reasonable to suppose that differences of opinion between *Il Duce* and the Council are not always resolved in favor of the former. At all events, it is not too much to say that Mussolini *and* the Grand Council govern Italy.

PARTY FUNDS

Money for promoting the Fascist cause came largely, in early days, from people of means who feared conquest of the country by socialism or bolshevism. Once the party was on its feet, machinery for self-financing was introduced; and funds seem generally to have been available in whatever amounts were needed. One resource is membership fees—five lire for card and badge at admission, and annual dues ranging between 15 and 45 lire, in inverse proportion to the length of time one has been a member. From time to time there is a levy of one per cent on the income of all members. Other special levies are made upon richer members, with penalty of expulsion from the party for refusal to pay. For extensive charitable activities carried on by the party, there are still other more or less arbitrary assessments; and of course there are occasional voluntary contributions. The payments exacted are usually of such proportions as to constitute a genuine test of party loyalty; at all events, it is doubtful whether they are exceeded in the case of any other political party in the world.

[1] The Council is understood to have on file a list of names from which one would be selected for presentation to the king in the event of a vacancy in the premiership —which explains how it is planned to meet the much-discussed problem of succession to the present dictator.

PARTY TECHNIQUES

All manner of ingenious devices are employed for keeping the party in the public eye, impressing the people with its invincibility, and emphasizing the honor and prestige associated with membership in it. A Fascist militia, recruited from oncoming classes of Young Fascists at the age of 20, and numbering upwards of half a million, carries on maneuvers and performs public services which dramatize the régime. An elaborate ritual of uniforms (black shirts), banners, badges, salutes, songs, and shouts makes further impression on the popular mind. Incredibly numerous celebrations of party and national anniversaries afford opportunities for the lavish public spectacles which a foreign observer has humorously termed Italy's "principal industry." [1] Literary, athletic, and other competitions, with prizes for the victors, win the hearts of the young. Institutes of Fascist culture, with lectures aimed more or less surreptitiously at indoctrination, are made as attractive as possible to the more mature. A vigorous party press headed by Mussolini's personal organ, *Popolo d'Italia*, pours forth incessant streams of propaganda, while a censorship as rigid as any the world has known prevents the publication of newspapers, pamphlets, and books of hostile tone. Party secretaries and other officials flit hither and yon, watching over every phase of both party and national life that may have bearing upon the maintenance of morale, loyalty, and control. And all the while millions of children and young people are being indoctrinated, trained, and otherwise prepared to take their places on the party rolls of the future. Only in other one-party, dictatorial régimes, notably in Germany and the U.S.S.R., will one find ritualistic, propagandist, and disciplinary techniques of comparable character.[2]

[1] H Finer, *Mussolini's Italy*, 404.

[2] On the Fascist party in general, see H. R Spencer, *op. cit*, Chap. xii, H. A. Steiner, *Government in Fascist Italy*, Chap. iv, H. Finer, *op. cit.*, Chaps. xi–xv, G. A. Borgese, *Goliath; The March of Fascism* (New York, 1937); H. W. Schneider, *Making the Fascist State;* and for a Fascist account, P. Chimienti, *op. cit.*, 542–616. Extended discussion of the party's techniques of civic training will be found in H. W Schneider and S. B. Clough, *Making Fascists* (Chicago, 1929), types and qualities of party leaders are analyzed in H. D. Lasswell and R. Sereno, "Governmental and Party Leaders in Fascist Italy," *Amer. Polit. Sci. Rev*, Oct., 1937, and propaganda techniques are described in A. Zurcher, "State Propaganda in Italy," in H. L. Childs (ed.), *Propaganda and Dictatorship* (Princeton, 1936), 35 ff.

CHAPTER XLII

Government under the Fascist Régime

NO ONE needs to be told that, even in a country with parliamentary institutions as imperfectly developed as were those of pre-Fascist Italy, the monopolizing of power by a party like that described, and under the leadership of a Mussolini, could mean nothing short of a transformation of government from top to bottom. To be sure, as remarked elsewhere, some parts of the old political structure south of the Alps still stand. The king remains in the Quirinal. The list of executive departments is not very different from before. The Senate looks much as it did. Except that five "supreme" courts have been combined into one, the hierarchy of judicial tribunals is structurally intact. Local government is still carried on in communes and provinces, with the prefect as principal local spokesman for the central authority at Rome. None the less, all is different. A king with rather larger powers than parliamentary systems ordinarily permit has been pushed so completely into the background that paragraphers find his obscure and helpless position a theme for humorous thrusts, sometimes not untinged with pity. A group of ministers—all Fascists of unimpeachable zeal and loyalty—compose a cabinet in which a premier-dictator, significantly termed by law *Capo del Governo* sometimes holds as many as half a dozen portfolios and, in any event, is the absolutely dominant figure. The Senate has receded into an even more purely nominal and honorary position than it held in former days. After having been converted, by stages, from a broadly representative body, chosen by the nation on the conventional lines described in earlier pages, into a congress of hand-picked Fascist delegates prepared to rubber-stamp the policies and decisions emanating from the dictator's offices in the Palazzo Viminale, the Chamber of Deputies gave way in 1938 to a Fascist and Corporative Chamber, instituted in conformity with long-developing plans for a "corporative" type of state. A triumphant party—the only one permitted to exist—has become by law an organ of the state, so inextricably interlocked with

A NEW GOVERNMENT IN AN OLD SETTING

the government, in both personnel and function, that no one can say with assurance where party leaves off and government begins.

WHAT HAS BECOME OF THE "STATUTO"?

Has the new régime any basis in constitutional law? The answer is, perhaps, both "yes" and "no." When the Fascists first came to power, Mussolini avowed that their intention was to govern within the framework of the national constitution, or *Statuto*. By 1925, his tone had changed, and we hear him asserting: "We must violate the *Statuto*." No longer, he said, did that instrument meet the needs of the country; in effect, it had been revoked by "the march of events"; "are we dealing with archaeology or with politics?" Nevertheless, the *Statuto* has never been abrogated by overt act; nor has its text ever been formally amended. A gesture toward regularizing the newly arisen régime was indeed made in 1924, when a commission was named to consider constitutional revision. The resulting recommendations, however, were not followed up. Instead, the view propounded by a leading member (Alfredo Rocco) prevailed that Fascism was merely "transforming" the political system, not creating a new one; from which the deduction was drawn that whatever changes were desired could be effected by simple "constitutive legislation." Viewed correctly, in Fascist theory, the *Statuto* was originally intended to provide for control of affairs by the king's government, with Parliament as only a ratifying agency. Recovering full control for this same king's government (in which *Il Duce* was now the central figure), and relegating Parliament to a secondary rôle or less, represented merely a "restoration," or "purification," of a fundamental law which democrats had "degraded." Persons who disagree with this interpretation will contend that the constitution not only has been ignored in plenty of individual instances, but has to all intents and purposes been repudiated as a whole. The Fascist viewpoint, however, deserves at least to be noted.

THE KING IN THE NEW RÉGIME

In the earlier order of things, all executive power was vested in the king; and this is still the constitutional theory.[1] All appointments, for example, continue to be made in the monarch's name. Having apparently accepted the Fascist order for what it is, Victor Emmanuel III,[2] however, shares in the conduct of public affairs in only the most perfunctory fashion. Actual power belongs elsewhere—chiefly, of course, to the premier-dictator and the agencies, old and new, in

[1] Reasserted in the Fascist law of 1925 making the prime minister "head of the government" See p 838 below.

[2] Now not only king of Italy but king of Albania and emperor of Ethiopia.

which he is the dominating figure. Of these agencies, two are of main importance, *i.e.*, the cabinet and the overlapping Fascist Grand Council, concerning which something already has been said.

THE MINISTERS AND THE "HEAD OF THE GOVERNMENT"

Structurally, at all events, the council of ministers under the parliamentary régime was a good deal like that found in France and elsewhere. From 12 to 15 ministers headed the respective executive departments; one of the number was prime minister, with usually some added influence and prestige, but with little actual supremacy; prime ministers and their colleagues came to office and left it with bewildering rapidity. The Fascist order is something entirely different. To be sure, the number of ministries, though changed from time to time, is about the same as before—of late, 15—and the list, with two or three exceptions, reads as it formerly did.[3] Moreover, the ministers still function collectively as a council of ministers, or cabinet. But from the moment when Mussolini assumed the premiership in 1922, that office was invested with steadily growing power; and in 1925 one of the great organic laws by which the *Statuto* has been supplemented at Fascist hands—a Law on the Powers and Prerogatives of the Head of the Government[1]—formally converted the prime minister (although without discarding that designation) into *Capo del Governo*, or "head of the government," with unique prerogatives and powers. Under terms of this instrument as modified slightly by later legislation, the head of the government—still occupying technically the post of prime minister, and hence "appointed and recalled by the king"—is responsible to the king alone for "the general policy of the government," has full authority to "direct and coordinate the activities of the ministers," and is given the inviolability of person commonly reserved for royalty, in the form of a death penalty for any attempt upon his life, safety, or personal freedom, to which is added the significant provision that anyone offending him "in words or deeds" shall be liable to both fine and imprisonment. Complete supremacy in the domain of legislation is assured by the stipulation that no bill, and indeed not even a motion, may be submitted to either the Senate or the new Fascist and Corporative Chamber without the *Capo's* permission—which means, of course, that no proposal on which a vote might result unfavorably stands much chance of being brought up.

[1] Foreign Affairs, War, Marine, Justice, Finance, Communications, Public Works, Trade and Currency, Corporations, Popular Culture, Education, Agriculture, Interior, Air, Italian Africa.

[2] For its text, see W. E. Rappard *et al*, *Source Book*, Pt. III, 11–13.

MINISTERIAL MANIPULATION BY THE HEAD OF THE GOVERNMENT

Two further aspects of the ministry are significant. In times past, the prime minister commonly chose to occupy the post also of minister of the interior—for reasons identical with those which formerly influenced French prime ministers to do the same thing. In addition to this key portfolio, however, Mussolini has simultaneously held various others: in 1937, he was minister not only of the interior, but also of foreign affairs, colonies, war, navy, and corporations (late in the year, indeed, he assumed the headship also of a newly created ministry of "Italian Africa"); at one time previously, he indeed held no fewer than eight out of the then total of 14 ministerial positions. This doubling up, of course, tends strongly to concentrate power in the premier-dictator's hands, and to simplify problems of discipline and control. A second device makes for the same end, namely, the frequent shifting of ministers from one post to another. Not only may a minister be dismissed summarily and with no reasons given, but he may be transferred without consultation from finance to education, and later on to aviation or something else. Under-secretaries in the departments are condemned similarly to a roving existence; and all with a view, so Mussolini explains, to testing aptitudes and refitting personnel to changing circumstances—although the distant observer cannot help suspecting that a main object of the practice is to prevent possible entrenchment in power on the part of a potential rival.[1]

THE CIVIL SERVICE

From as far back as Napoleonic times, the Italian civil service has borne general resemblance to the French. Interestingly enough, however, as long ago as 1893 Italy arrived at a general system of competitive examinations for admission to the inferior grades—a goal which France has not even yet reached on the basis of nation-wide law.[2] To be sure, charges of political manipulation have always been heard; and higher officials have at all times been appointed on frankly partisan and personal grounds. But, by and large, merit has received substantial recognition. Under the Fascist régime, the general structure of the service has continued much as before; and competitive examinations are still held. As early as 1923, however, it was decreed that each de-

[1] Among important agencies operating outside of the departments may be mentioned. (1) three panels or sections of the Council of State (see p. 852 below), which give advice on matters connected with the work of the ministries, (2) an attorney-general, who examines drafts of proposed legislation and gives the government legal opinions, and (3) a Court of Accounts, which audits government finances.

[2] See p. 478 above.

partment should be responsible for the "good civil, moral, and political conduct" of its employees; and by stages the service was purged—"purified" was the term—of all who were not Fascist party members in good standing. Naturally, too, only persons who can meet the party test are any longer admitted. Certain groups of civil servants (policemen, magistrates, professors, etc.) are denied the right to form themselves into "syndicates," or unions. Otherwise, the right of organization exists, even though only by sufferance, not by law; and the government recognizes no obligation to negotiate contracts with its employees collectively.[1]

THE GRAND COUNCIL

When describing the machinery of the Fascist party, in the preceding chapter, it was necessary to bring into view an agency of supreme importance (along with the Leader), *i.e.*, the Fascist Grand Council.[2] At the risk of repetition, this institution must here be mentioned again; for, in government no less than in party, it wields fuller control than does any other organized body. It is of the essence of Italian totalitarianism, not only that a single party shall be endowed with all power and assume all responsibility, but that this party shall be incorporated into the fabric of the government. As pointed out above, the process of fusion began, as a matter of law, when, in 1928, the Grand Council, previously only a party organ, became also an organ of the state. Overlapping the ministry in personnel (the Leader and several other ministers belong to both), the Council, as has been observed, presents to the king (through Mussolini as prime minister) the names of persons to be appointed as ministers, approves bills to be submitted to the Senate and Chamber (including, of course, all that contemplate changes in governmental structure or functions or have otherwise a "constitutional" character), and advises the head of the government on whatsoever matters he may choose to refer to it. In its relations to government, the Council is obviously a great deal more than merely a consultative and advisory body. It is, as one writer has remarked, in a sense, the ultimate source of both executive and legislative power, subject only to the control of the head of the government, and responsible to him alone.[3]

[1] A. Lusignoli, "The Italian Civil Service," in L. D. White (ed.), *The Civil Service in the Modern State* (Chicago, 1930), 303–339; T. Cole, "Italy's Fascist Bureaucracy," *Amer. Polit. Sci. Rev.*, Dec., 1938.

[2] See p. 833 above.

[3] V. M. Dean, in R. L. Buell (ed.), *New Governments in Europe* (rev. ed.), 69. Before the suppression of the Chamber of Deputies in 1938, the Grand Council made up the list of 400 candidates to be put before the voters at parliamentary elections. See p. 843 below.

NEW LEGISLATIVE INSTITUTIONS—THE FASCIST AND CORPORATIVE CHAMBER (1938)

When assuming the premiership in 1922, Mussolini significantly reminded the Chamber of Deputies that he could, if he desired, make of the "dim gray hall" in which the body sat, "a bivouac of Fascist soldiers." A year later, he was heard remarking: "The Chamber of Deputies has never pleased me. It is an institution which we have found to be extraneous to our mentality and to our fashion as Fascists." Later on, he began talking about displacing it altogether with a body of quite different character—not popularly elected on political lines, but composed of *ex officiis* representatives of economic groups. For years, such a move was in the offing, without actually being made. In 1937, however, it was indicated as definitely impending; and in December, 1938, the step was taken, when Senate and Chamber joined in passing a government bill abolishing the old Chamber and setting up in its stead a new body known as the Fascist and Corporative Chamber. Already the old Chamber had been transformed into something very different from the freely elected legislative branch contemplated in the *Statuto;* nevertheless, its decision for "suicide" in 1938, duly ratified by the Senate and approved by the king, was an occurrence of highly unusual character. "Parliament," therefore, in the earlier meaning of the term, is no more. To be sure, the Senate still stands; and, the new Chamber being also a legislative body, it is possible to view what has happened as merely the substitution of one kind of "lower house" for another. And since both Senate and Fascist Chamber are expected to be in session much of the time, acting on, and even originating, bills, Fascist practice in the matter offers outward contrast to that of Nazi Germany, where, as we have seen, the Reichstag is convoked only rarely and for meetings lasting but a few hours, or even minutes. In essence, however, the Italian Senate and Fascist Chamber constitute no true parliament. Almost equally with the Reichstag, they simply go through the formality of agreeing to what is presented to them from above. Democracy finds no truer expression in one than in the other.

THE NOW DEFUNCT CHAMBER OF DEPUTIES—SOME CURIOUS ELECTORAL HISTORY

The decline and fall of the old Chamber of Deputies so well illustrates political trends and techniques in the Fascist era that, even though the institution has become wholly extinct, something may well be said about the bases on which it rested through many years of Fascist rule. On the eve of the Fascist conquest of power, a Chamber of 535 members

still presented the familiar aspect of a legislative body chosen by manhood suffrage, with proportional representation. In the single general election held under the proportional plan (in 1921), no party captured as many as one-fifth of the seats; nor, as Fascists recognized equally with Socialists and Communists, was it likely that any party would ever gain a clear majority so long as existing electoral arrangements were maintained. For Mussolini, the deduction was obvious: the government which he headed, although enjoying only minority backing, must be assured the advantage of a parliamentary majority by the invention of an electoral system designed expressly to achieve such a result; and this end was attained through a new electoral law devised by one of *Il Duce's* right-hand men and voted by Parliament in 1923. Dividing the kingdom into 15 electoral areas, each returning 36 deputies, the law introduced an extraordinary plan under which the party polling the largest popular vote throughout the country (provided the number was as much as 25 per cent of all the votes cast) should be awarded two-thirds of the seats in the Chamber, the remaining third being divided proportionally among the other parties; and when, in an election held in the following year, the Fascists—confronted with only a divided and futile opposition—polled 63 per cent of the total vote, they obtained something that no other party in the kingdom's history had ever enjoyed, *i.e.*, an independent parliamentary majority, and one in the present instance prepared to put the stamp of approval on everything that the government proposed. When the Socialist deputy, Giacomo Matteotti, rose in the new Chamber and boldly challenged the validity of the election, charging that coercive tactics had been employed and that the government had announced its intention to remain in office irrespective of the outcome, he promptly disappeared and was later found murdered.[1] This affair and its repercussions marked the end of the last vestiges of parliamentary government in any proper sense of the term. The indignant opposition deputies withdrew from the Chamber in a body, and those who afterwards indicated a desire to return were informed that they could do so only on condition of promising unqualified acceptance of Fascist rule. In 1926, Parliament was definitely deprived of the right to initiate legislation.

ELECTORAL LAW OF 1923

[1] The crime was admittedly Fascist in origin and execution; indeed, Mussolini publicly avowed responsibility for it and dared the Chamber to impeach him. A "trial" resulted in the acquittal of all but two of the alleged conspirators, and these were granted amnesty after serving two months in prison. For a stirring contemporary indictment of Fascism, see Matteotti's *The Fascisti Exposed; A Year of Fascist Domination*, trans. by E. W. Dickes (London, 1924).

ELECTORAL LAW OF 1928

Determined to eliminate all electoral (as well as other) opposition, Mussolini set up a commission charged, among other things, with planning a "reform" of the Chamber; and, a scheme of Fascist syndicates, or unions, of employers and employees having been introduced in 1926,[1] a comprehensive electoral law of 1928 provided for a new "corporative parliament" in which "unproportional representation" should have no place—for the simple reason that opposition elements (if any) would be accorded no representation at all![2] Under the remarkable arrangements resulting, the country was thrown into one grand electoral area. When a new Chamber was to be chosen (once every five years), 800 candidates were proposed by national confederations of Fascist syndicates and 200 by approved cultural and philanthropic organizations; the Fascist Grand Council selected from the 1,000 names 400 to be placed, as a "national list," before the voters;[3] and the election consisted merely of a nation-wide plebiscite on the list, the voters being asked simply to answer "yes" or "no" to the question, "Do you approve the list of deputies designated by the National Grand Council of Fascism?" Should the list by any chance be rejected, further lists, each containing names not to exceed 75 per cent of the number of deputies to be elected, were to be drawn up by Fascist syndicates having over 5,000 members, and presented to the electorate; and any such list obtaining a plurality of votes at the succeeding polling should be declared elected in its entirety, other lists being allotted the remaining seats in proportion to the votes polled. In the very unlikely event of this special procedure being resorted to, the Fascists could hardly do worse than capture the larger integral block. In point of fact, it was never put to a test.

Needless to say, all persons nominated—certainly all whose names were placed on the final list—were Fascists of tested loyalty; and in the electoral "campaign" no opposition speeches were allowed to be made or other hostile activities indulged in. Ostensibly, the law accorded equality of representation to confederations of employers and confederations of employees. Actually, however, the system was weighted heavily in favor of the employer element. Whereas, for example, in the 1929 election, industrial employers and employees were authorized to name 80 candidates each, the

[1] On these syndicates, see p. 847 below.

[2] All other parties had, of course, by this time been suppressed. See p 829 above.

[3] The Council might, however, include names not submitted by the agencies indicated, and the 1,000 from which, in the main, the 400 were selected were not made known to the public.

participating employee organizations represented 1,300,000 people, the employer organizations only 71,459; in agriculture, the disparity was as between 1,021,459 and 314,658. And when the lists came under the eagle eye of the Grand Council, the scale was tipped even farther; on the occasion mentioned, the 400 candidates finally put before the voters included 225 representatives of employer interests and only 85 of the employee groups. On a different basis, it may be noted, too, that agriculture, although the occupation of more than half of the population, furnished less than a quarter of the names submitted to the Grand Council.

THE SUFFRAGE

Only Fascists could be put up as candidates, but the voters were not confined to members of the party, or even to avowed sympathizers. Women had never voted in Italy, and were still ineligible;[1] and the male electorate was smaller by almost a fourth than in pre-Fascist days. But any male citizen might vote at the age of 21 (18 if married and a father), provided he met one of four formal qualifications: (1) liability to payment of syndical dues as an employer, an employee, or member of a profession; (2) payment of 100 lire (about $15.00) direct taxes, or enjoyment of an annual income of 500 lire from government bonds; (3) receipt of a salary from the national or a local government; and (4) membership in the clergy of a recognized church. The total potential electorate numbered some 10,500,000, nearly two-thirds qualifying as dues-payers to syndicates.

TWO ELECTIONS

Two elections were held under the system described (in 1929 and 1934), and a third would have been due in 1939 if the Chamber had not been abolished. On the first occasion, 8,519,559 voters who went to the polls deposited in the electoral urns tricolor-decorated ballots indicating their approval of the Grand Council's list, while 135,761 deposited severely plain ballots bearing the single word *No;* anyone interested could easily enough see how any elector was voting. Five years later, the results still more closely approached Mussolini's oft-boasted "100 per cent": 10,025,513 affirmative, 15,265 negative. No unbiased observer supposed that these extraordinary figures reflected the actual sentiments of the 90 to 95 per cent of the electorate that went to the polls. Whatever the quite unascertainable proportion of *bona fide* supporters, the number of actual dissenters who were cajoled, frightened, or otherwise influenced to "go along" must have been considerable. Nevertheless, any régime that can muster such evi-

[1] In 1925, to be sure, they were given the suffrage in municipal elections, but, ironically, all such elections were soon abolished.

dence of even outward support must be conceded to possess an extraordinary hold upon the body politic.[1]

THE NEW FASCIST AND CORPORATIVE CHAMBER

All of this, however, is now a thing of the past. Local elections disappeared early in the history of Fascist rule; national elections—such as they were—are now gone also. The new Fascist and Corporative Chamber has no fixed number of members[2] (for the present, the total runs close to 650); but all belong because of appointment by Mussolini to other organs of the régime—in other words, all serve *ex officiis*, and none sit for any fixed term. One category consists of *Il Duce* himself and the members of the Fascist Grand Council—in all, some 25. A second category consists of all party federal secretaries and other officials composing the party National Council—a total of approximately 120. The remaining 500, or thereabouts, comprise the "corporative" representation and include all members of the National Corporative Council—chiefly the 500 active members of the councils of the 22 category corporations.[3] Every individual member owes his position to selection for some post or other by *Il Duce*, and can be removed by the same authority—which of course means that the new body can be controlled even more directly and effectively, if possible, than the old handpicked, rubber-stamp Chamber of Deputies.

THE CORPORATIVE STATE—UNDERLYING CONCEPTS

The comment just made on the corporative element in the new Chamber presupposes some acquaintance with a set of institutions especially characteristic of the Fascist system; and to these we must next turn. When assuming the premiership in 1922, Mussolini indicated his government's intention to exercise a guardianship over the nation's economic life and to tolerate no conflicts between

[1] It goes without saying that at election time the Fascist government and its multitude of agents spared no effort to stimulate the people to make the best possible showing. Election day was fixed to coincide with some patriotic celebration, Fascist orators swarmed through the country like locusts, buildings were plastered with Fascist appeals, workers were told that they must vote for the régime if they wanted to hold their jobs, stay-at-homes were rounded up by assiduous black-shirts and rushed to the voting places, whole villages, indeed, assembled their voters and went marching to the polls behind a band! See, however, an English observer's interesting comments on the contemptuous attitude, and even apathy, of many of the voters. H Finer, *Mussolini's Italy*, 266. Cf. G. Salvemini, "Totalitarian 'Elections' in Italy Today," *Social Research*, Feb., 1937

[2] The members are known officially as "national councillors." Like the former deputies, they must be at least 25 years of age and in possession of full civil and political rights, and they receive salaries as fixed by law.

[3] The reason why the three groups appear to exceed the total of 650 is that the categories overlap considerably in personnel. Only about 650 different persons have seats.

capital and labor that would interfere with productive enterprise. How fully this forecast has been realized is indicated not only by the government's great holdings of stock in key industries today, its control over banking and credit, foreign trade, agriculture, and manufacturing, but by its now largely fulfilled plans for a "corporative state" grounded upon economic relationships and objectives and so far eclipsing the purely political state that a "fascist and corporative chamber" has stepped into the position of the Chamber of Deputies itself. Agreeing with socialists and syndicalists of pre-war days that politics and economics are inseparable, the Fascists have developed views otherwise very different, in at least four fundamental respects: (1) while insisting upon the ultimate authority of the state to regulate every phase of economic and social activity, they strongly uphold the right of private property and look to private enterprise as, after all, the principal agency for carrying forward the country's economic life; (2) instead of seeking to suppress class consciousness and distinctions, with a view to an eventual classless society, they propose to perpetuate and stabilize classes, *e.g.*, workers and employers, as furnishing the varied and complementary elements from which a full-orbed state must be built, (3) as a matter of avowed principle, even though not completely realized in practice, they insist that no one class shall be favored at the expense of other classes; and (4) for them, the classes existing in Italy form a complete and self-contained group, with no true community of interest with classes, however similar, beyond the national frontiers.

THE DEVELOPING MACHINERY

Out of these concepts arises the Fascist hierarchy of syndicates, federations, confederations, and corporations, and ultimately the general scheme of the corporative state. Coming into power the avowed enemy of socialism, the Fascists lost no time in turning their weapons against the Socialist-dominated trade unions. As early as 1922, their program contemplated replacing these with Fascist-controlled syndicates, to be joined in federations, and these in confederations; and not merely of workers ("white-collar" and manual), but of employers as well; and eventually, the employee and employer hierarchies were to be tied together in "corporations." Realization of the plan proved difficult and slow, but a law of 1926, entitled "The Legal Discipline of Collective Labor Relations," drew the outlines of the system, and the principles intended to govern the relations of workers and employers with each other were set forth in a Labor Charter of 1927 which was hailed as the last word in enlightened

labor policy.[1] In anticipation of the final rounding out of the scheme, a Ministry of Corporations, with Mussolini at its head, was established in 1926, and in 1930 a National Council of Corporations, also presided over by Mussolini, and intended to bring together not only representatives of the corporations when established, but economists and other experts as well. Finally, in 1934—the superstructure having thus been created in advance—a total of 22 corporations, planned to link up employer and employee organizations identified with an equal number of occupations or businesses, were decreed, with the Council of Corporations revamped to consist of 823 persons belonging to the various corporation councils.[2]

THE SYNDICATES

The primary unit in the remarkable mechanism thus evolved is the syndicate; and a syndicate is a union or association of workers or of employers, as the case may be, in a given branch of industry and within a particular area. The area may be a commune or other small district, but more often it is a province, a region, or even the country as a whole; and all syndicates are composed either of employees or of employers—never of the two combined. Membership is voluntary; but non-members within the area and occupation must, equally with members, make an annual contribution to the syndicate treasury not exceeding one day's pay in the case of workers and one day's pay-roll in that of employers; and non-members are bound, equally with members, by labor contracts negotiated and other actions taken. The principal functions of the syndicates are, indeed, to negotiate collective labor contracts covering hours, wages, and other conditions of work (although this function has tended to be taken over by the federations, or even confederations, spoken of below), and to defend the interests of their members in disputes adjudicated in labor courts. Every syndicate must have a president or secretary, chosen by the members. But these officials require confirmation from Rome; a board of directors (usually found) may be supplanted from Rome by a commissioner; and a syndicate accused of irregularities—or of insufficient enthusiasm for the Fascist régime—may suffer a withdrawal of governmental "recognition."

FEDERATIONS AND CONFEDERATIONS

Syndicates of workers and syndicates of employers are grouped separately into national federations, each with a council, an executive

[1] For the texts of these important documents, see W E. Rappard *et al.*, *Source Book*, Pt. III, 32–50.

[2] For the text of the measure, see *ibid.*, 59–62. Accuracy requires it to be observed that certain corporations had existed, at least on paper, somewhat before this date.

committee, and a president (employers) or secretary (workers); and the federations are in turn organized into nine national confederations[1]—four representing workers in industry, agriculture, commerce, and credit and insurance, four representing employers in these same fields, and a ninth representing professional men and artists. These confederations are regarded as semi-public, their officers are appointed by the Fascist government, and, as explained elsewhere, it was to them that the electoral law of 1928 entrusted the naming (in allotted quotas) of 800 candidates when a new Chamber of Deputies was to be elected.

THE CORPORATIONS

To this point, the hierarchies of employer and employee organizations parallel each other, but are entirely separate. In the corporations, capping the structure, the two are finally brought together. Pursuant to a Law of Corporations passed in 1934, Mussolini in the same year announced, as we have seen, 22 such groupings, covering various branches of production such as cereals, vineyards and wine, sugar beets and sugar refining, forestry, fisheries, building, paper and printing, mining and quarrying, inland communications, and theatres and public entertainments[2]—each corporation functioning through a council composed of equal numbers of representatives of employer and employee federations (together with a few technicians) in the particular branch, with Mussolini or some one designated by him, as president, and with members of the government, or other party adherents, as additional officers. Charged with supervising the regulation of wages and production costs within their respective industries, controlling relations with other industries, adjusting larger issues in dispute between capital and labor, promoting economic education, and advising the government on industrial matters, the corporations are themselves linked up in the National Council of Corporations, composed mainly of the 500 active members of corporation councils (the number was reduced to this figure by law of 1939), who, in turn, as we have seen, constitute over three-quarters of the membership of the new Fascist and Corporative Chamber.[3] After all, the entire syndical-corporate structure is hardly less a political than an economic instrument. Devised and developed by the Fascists, actuated

[1] Prior to 1934, there were 13 of these

[2] A rearrangement in January, 1939, introduced some changes in the list, but preserved the former number. The complete list, with composition of the respective councils, will be found in H. A. Steiner, "Fascist Italy's New Legislative System," *Amer Polit Sci. Rev*, June, 1939, p. 458

[3] A similar number of associate members have functions in connection with the internal affairs of the corporations, but do not belong to the Chamber.

from top to bottom by Fascist ideals, and manned, in all important posts, by Fascist officials and appointees, the system constitutes a principal means by which the régime is to be perpetuated and by which national well-being and power are to be enhanced as the régime's ultimate justification.[1]

THE SURVIVING SENATE

No part of the old governmental system has undergone less change at the hands of the Fascists than has the Senate. To be sure, a group of liberal-minded senators voiced strong opposition in the earlier days, voting persistently against basic Fascist measures. To be sure, too, life was made so uncomfortable for many that they went into semi-voluntary exile, or at all events abstained from further attendance at sessions. As a predominantly aristocratic, government-appointed, and government-controlled body, the chamber as a whole, however, has proved tractable enough; and Mussolini has consistently played up to it by flattering its sense of importance as a force for order and stability. Decidedly more than half of its members have been appointed since 1922, and if this were not sufficient to assure prompt and decisive support for the government's measures, any requisite quota of new Fascist senators could be added by a few strokes of the pen. The composition and general appearance of the body were not touched by the legislation which uprooted the Chamber of Deputies.

A MODEST RÔLE FOR THE CHAMBERS

It is too early to forecast the workings of the new parliamentary set-up in any very definite way, but it is clear that the rôle intended for the chambers is, if possible, more modest than that envisaged for the Parliament of former years. Not that the legislative output has ever been, or likely will in future be, small. During the lifetime of the last Chamber of Deputies (1934–38), no fewer than 2,686 projects

[1] For somewhat fuller accounts of the corporative system, see H. W Schneider, *The Fascist Government of Italy*, Chap. IV, R L Buell (ed.), *New Governments in Europe* (rev. ed.), Chap. IV, H. A. Steiner, *Government in Fascist Italy*, Chaps VII–VIII, and H. Finer, *Mussolini's Italy*, Chap. XVII Important special works include C. Haider, *Capital and Labor under Fascism* (New York, 1929), F. Pitigliani, *The Italian Corporative State* (London, 1933), A. Pennachio, *The Corporative State* (New York, 1927), and G L Field, *The Syndical and Corporative Institutions of Italian Fascism* (New York, 1938). For discussions of the subject by Mussolini himself, see his *The Corporate State* (Florence, 1936), and three speeches reprinted in W E Rappard *et al*, *Source Book*, Pt III, 63–88 Among valuable recent works on Fascist economic policies may be mentioned C. T. Schmidt, *The Plough and the Sword, Labor, Land, and Property in Fascist Italy* (New York, 1938), and *The Corporate State in Action* (New York, 1939), W. G. Welk, *Fascist Economic Policy; An Analysis of Italy's Economic Experiment* (Cambridge, Mass., 1938). The last-mentioned book is in many respects the best on the subject.

of law were enacted, out of a total of 2,705 which the government introduced. In this same period, however, precisely *four* private-members' bills made their appearance, and only 34 oral or written questions were addressed to the ministers. Notwithstanding free use of the power to legislate by decree, the government chose to have a large proportion of its measures cast in the form of statutes. But this did not mean that Parliament itself could originate a great deal, or indeed do much of anything except perfunctorily place its stamp of approval on what was sent along to it from government headquarters in the Palazzo Viminale. Far from being a move in the direction of a more independent legislature, the law of 1938 creating the Fascist and Corporative Chamber frankly recognized the "head of the government" as the supreme legislative authority and the Senate and Chamber as having only the auxiliary function of "collaboration."

LEGISLATION BY DECREE

Of continuing importance in the legislative picture is, of course, also the practically unlimited power of the government to legislate by executive decree. Elsewhere we have noted the steady growth, even in English-speaking countries, of legislation taking the form of orders, rules, and regulations emanating from executive and administrative authorities,[1] and in Italy, not only did the *Statuto* from the first contemplate executive initiative in law-making, but legislation by decree was carried to a high level in pre-Fascist times, notably under the stress of the World War. It remained for a statute of 1926,[2] however, to endow the executive—nominally the king, but actually the Fascist dictatorship—with virtually unlimited authority to make laws, and to enforce them as such so long as not expressly disallowed by Parliament—a parliament so constituted and controlled as manifestly to be extremely unlikely to interfere. Decrees with the full force of law might be issued relating to (1) the execution of existing laws, (2) the exercise of general powers belonging to the executive branch, and (3) the organization and functioning of the administrative system—and, indeed, significantly, on any occasion of "urgency or absolute necessity." Under the new arrangements since 1938, the decree power is broadened rather than otherwise. To be sure, emergency decrees are still required to be laid before the chambers and to receive their assent in order to be valid. In other cases, however, not only do decrees not require such ratification, but the

[1] See pp. 111–115 above.

[2] For the text of this measure, see W. E. Rappard *et al*, *Source Book*, Pt. III, 14–16.

government, after waiting vainly for 30 days for the chambers to act on proposals, may proceed to attain the desired ends by means of decree.

ASPECTS OF PROCEDURE—THE COMMITTEE SYSTEM

In pursuance of procedural provisions of the law creating the Fascist and Corporative Chamber, that body and the Senate are organized on similar lines, and indeed their rules, dating in the present form from late in 1938, are almost exactly alike. Each body has a president and other officers, appointed by royal decree, and a set of "commissions," or committees—14 in the Chamber and eight in the Senate[1]—consisting (with a few exceptions) of from 25 to 40 members each in the one case and of at least 30 in the other. How little autonomy is left to the chambers is indicated by the fact that the presiding officer in each body, designated in reality, of course, by *Il Duce*, not only determines how many members each committee shall have and makes all the assignments,[2] but appoints the committees' presidents, vice-presidents, and secretaries and decides to which committee any given legislative project shall be referred. Another interesting feature is the power with which committees are endowed to convert bills into laws without action by the Chamber or Senate as a whole. Certain specified categories of bills,[3] after reference to committee in the two houses, are reported out in the usual manner and become law only on being voted by the chambers. But all other kinds of measures, after being referred, are acted upon definitively by a committee in one house, transmitted (if approved) by it to the corresponding committee in the other house, and, if there approved, made law, on being signed by the presidents of the two chambers and eventually, as a matter of form, by the king—without ever having been either debated or voted upon by the houses in plenary session. Since, matters standing as they do, parliamentary approval may practically be taken for granted in the case of any government bill, the procedure described affords a very natural short cut for avoiding delays and difficulties inherent in more ponderous legislative machinery.[4] The committees, furthermore, may be convened

[1] In the Chamber, the list corresponds almost exactly to that of the ministries, *i.e.*, Foreign Affairs, Internal Affairs, Italian Africa, Armed Forces, Justice, Education, etc.

[2] The old bureau system of selecting the members of committees, patterned on the earlier plan in France (see p. 515 above), disappeared in 1938

[3] Bills of a "constitutional" nature, budget bills, bills making general delegations of legislative power, and a few other types, including *any* bill for which the government asks or approves use of the plenary procedure.

[4] Bills may still be introduced by private members, but in practice they are so few as to be negligible.

for work at any time, regardless of whether the chambers are in session.[1]

JUDICIAL ARRANGEMENTS

Structurally, the system of courts remains largely as it was in pre-Fascist times. There is still, as in France, a separate set of administrative tribunals—one (known as the *giunta*) in each province, with appeal to a section of the Council of State at Rome—for the handling of actions against public officials; and the hierarchy of ordinary courts leads up from the praetors', or justices', courts in the administrative districts through the courts of first instance, the courts of appeal, and (for criminal cases) the assize courts, to the Court of Cassation at the top. Such changes as have been introduced are in part beneficial, in part otherwise. Quite justifiable has been the abolition of the former five separate courts of cassation and the concentration of their functions in a single tribunal of that name at Rome. Less defensible has been a reorganization of the Council of State making it more difficult for that body to interpose judicial check upon administrative authorities. And least to be commended was the creation, in 1926, of a Tribunal for the Defense of the State—a special court for the trial and punishment of anti-Fascists, usually on accusation brought by members of the secret police, and with banishment to the Lipari Islands as the commonest outcome. Strong hands, moreover, have been laid upon the processes of justice in other ways. In 1925, the judiciary was purged of anti-Fascist members; and while no overt "purification" of the sort has been indulged in since, the reason may well be that the judicial personnel (a considerable fraction of which has received appointment at Fascist hands) has been pretty well whipped into line. At all events, one hears the inevitable charge that trials having any sort of political aspect are not conducted with scrupulous impartiality. Another step has been the abolition of the jury system, combined with restoration of the death penalty and provision for severer penalties generally. As we have seen, trial by jury is under fire in some democratic countries, *e.g.*, France[2]; and certainly it everywhere presents difficulties and problems. But the procedures that have been introduced in Fascist Italy in lieu of the abandoned system force the conclusion that people there now have fewer safeguards against mis-

[1] There is as yet but little literature on Italy's new legislative arrangements. For much of the above information, the author has been dependent on studies made by Professor H Arthur Steiner and presented in part in his "Fascist Italy's New Legislative System," *Amer Polit. Sci. Rev*, April, 1939.

[2] See p 565 above.

carriages of justice than in an earlier day. Pardons, too, have been restricted to juvenile offenders.[1]

LOCAL GOVERNMENT

It would not be expected that a totalitarian régime would afford much scope for local self-government, and in Italy a system already highly centralized, on the French pattern, has been pushed to a point where few of the forms, and scarcely any of the realities, of local autonomy survive. Communes and provinces, to be sure, are still maintained—somewhat over 7,300 of the former (the number is constantly shifting) and 98 of the latter. But in both sets of areas the popularly elected councils have disappeared and the machinery of government, when not centrally imposed, is at least centrally controlled. In the commune—once the focus of such free local life as there was, and often a stronghold of socialist opinion—has been found since 1926 a centrally appointed, unpaid *podestà*, or magistrate, who wields both executive and legislative powers under instructions from, and checked solely by, the provincial prefect and the authorities at Rome to whom that official is answerable.[2] To be sure, in all communes of over 10,000 population, and in a few lesser ones, there is still a form of council—a *consulta* of from 10 to 40 members (80 in Rome). But the councillors are appointed by the prefect (in places of over 100,000, by the Minister of the Interior), from persons nominated by the local syndicates of employers and employees; and while the law specifies as many as 16 different subjects (contracts, loans, sales of property, etc.) upon which they must be consulted, they are purely advisory, with no power of decision or compulsion.

In the province—once endowed with an elective council enjoying considerable power—arrangements are more elaborate, but yield the same ultimate results. Here, there is some attempt to keep up a distinction between functions connected with national administration and others pertaining to provincial interests exclusively. The second category is entrusted to a provincial "president" and a provincial "rectory"—the latter bearing some resemblance to the communal *consulta*. But both president and rectory are appointed from Rome by the Minister of the Interior; and the two together have independence of action only so long as no occasion arises for overruling or otherwise restraining them. Centralized as all government is under the Fascist régime, the province is, of course, principally

[1] Cf. H. A. Steiner, "The Fascist Conception of Law," *Columbia Law Rev.*, Dec., 1936

[2] Rome, as the national capital, has a governor in lieu of a *podestà;* but the difference is merely one of name As many as three small communes may be entrusted to a single *podestà*

an area of national administration, with the centrally appointed prefect as the government's mouthpiece and trusted agent for the carrying out of all of its measures and policies. "The prefect," says the basic Law on Communal and Provincial Government of 1934, "is the source of all provincial activity, which receives its impulse, coördination, and direction from him." Called often to Rome by Mussolini for conference and instruction, the prefects are rivalled, as local incarnations of the régime, only by the provincial party secretaries.[1] Three important subsidiary agencies include (1) a prefectoral council, of two members besides the prefect, which exercises auditing and other fiscal supervision, (2) an inspection service, which assists the prefect in watching over provincial and communal administration, and (3) a *giunta*, or commission, with advisory functions, but serving also (as indicated above) as a provincial administrative court, with appeal to the Council of State at Rome.[2]

FASCISM AND THE CHURCH

THE LATERAN ACCORD (1929):

Interestingly enough, in the traditionally troublesome domain of relations between state and church, the Fascist government has accomplished what its predecessors never succeeded in achieving, *i.e.*, a comprehensive, even if not completely satisfying, settlement. During the early stages of the régime, an *entente cordiale* between Quirinal[3] and Vatican was built up, with the aid of concessions on both sides; and in 1929, two years of arduous secret negotiations culminated in an historic agreement, the Lateran Accord, embodied in three weighty documents—a concordat, a political treaty, and a financial settlement.

A. THE CONCORDAT

Dealing with the position to be occupied henceforth by the Roman Catholic Church and its clergy, the concordat permits other cults and churches to be "admitted into the state" by legislative enactment and guarantees freedom of worship for all religious groups as long as anti-Catholic propaganda is not indulged in, but nevertheless recognizes the "Roman and Apostolic Religion" as "the sole religion of the state"—

[1] For a typical communication of Mussolini to the prefects (in 1927), see N. L. Hill and H. W. Stoke, *op. cit.*, 463–465.

[2] Composed as it is of the prefect (as chairman), the two members of the prefectoral council, the chief of the inspection service, the chief accountant, and four party members designated by the Minister of the Interior, the *giunta* is an important instrumentality for coordinating the prefectoral offices and the party hierarchy. The system of local government in Italy today is described at length by H. A. Steiner in W. Anderson (ed.), *Local Government in Europe*, 307–337, and all significant parts of the voluminous law of 1934 will be found, in English translation, in *ibid.*, 339–379. For a briefer account, see H. A. Steiner, "The Italian Law on Communal and Provincial Government," *Nat. Munic. Rev.*, Sept., 1936.

[3] More truly, Mussolini's offices in the Palazzo Viminale.

in the sense (so Fascist authorities explain) that all official religious rites are to be Roman Catholic. Religious instruction in the Catholic faith is made compulsory in public schools, both elementary and secondary (although requests of parents that their children be excused from it are to be honored); and civil marriage ceremonies are no longer to be required. On the other hand, bishops, while continuing to be appointed by the pope, must in all cases be Italians, must take an oath of civil allegiance, must be approved by the government, and must abstain from party activities—except, at all events, in support of Fascist candidates.

B. THE TREATY

In the treaty, the Italian monarchy is recognized and all Catholic claims to the former Papal States relinquished in return for Italian recognition of the absolute independence of Vatican City, an area of 108.7 acres,[1] containing the Vatican and Lateran palaces and the Church of Saint Peter's, and with a resident population of some 600; and to this tiny state are confirmed all the trappings of sovereignty, including full powers of government, a separate flag and seal, a coinage system, a postal system, and complete immunity from interference by Italian governmental authorities. Not only Vatican City, but two or three small papal possessions at a distance from Rome (including the villa of Castel Gandolfo) are declared neutral and inviolable, and specific pledge is given that communications with the outside world shall never be cut off, even in time of war. On its part, the papacy, as a matter of voluntary policy, abstains from entanglement in international alliances, and even from membership in the League of Nations, holding itself perpetually free to speak with dignity, impartiality, and force in behalf of peace and other larger interests of humanity.

C. THE FINANCIAL SETTLEMENT

Having steadfastly refused to accept any part of the annuities pledged by the government in 1871 by way of compensation for church properties seized when Rome was occupied in the previous year, lest such action be construed as assent to the hotly contested arrangements laid down in the famous Law of Papal Guarantees, the papacy was, by 1929, entitled, on the books, to a very large accumulated indemnity. To get this matter finally out of the way, the third portion of the Lateran Accord introduced a mutually satisfactory compromise under which the Italian state paid over to the Vatican a lump sum of 750,000,000 lire (about $39,375,000) in cash and 1,000,000,000 lire (about $52,-

[1] About one-fiftieth the size of Monaco, previously the smallest of independent states.

000,000) additional in the form of five per cent government bonds. All financial claims have, therefore, been fully liquidated.

SURVIVING ISSUES

The Lateran Accord provided a sensible settlement for one of the country's most baffling problems, and from Mussolini's point of view any surrenders involved must have been more than offset by the presumed gain in national unity and morale. No one should have been more aware, however, that there then was, and likely would continue to be, wide divergences between Fascist and Catholic ideals and objectives; and one will not be surprised to learn that friction continued, with the Church frowning on many things that the Fascists did and the Fascists resenting what they chose to consider unwarranted interference of the clergy in matters that did not concern them. After three or four years, relations improved—only to become bad again after 1937 because of the Fascists' surrender to antisemitism,[1] and especially because of their persistent interference with the work of the lay Catholic propagandist agency, the *Azione Cattolica Italiana* ("Italian Catholic Action"). Early in 1939, death silenced Pope Pius XI on the very day before he was expected, in addressing a congress of Italian archbishops and bishops, to give fresh expression to his "bitter sorrow" because of Fascism's conduct toward the Church. The old scores, inherited from the days of Italy's unification, have been settled. But two irreconcilable forces are still contending for mastery of the Italian mind and heart.[2]

A REGIMENTED NATION

As has now appeared, the essence of the Fascist system is the rejection of popular sovereignty, democratic processes, and *laissez-faire* principles in favor of a totalitarian state, supreme over all other institutions, regulating and controlling without legal restraint, and directed by the few who are presumed to be superlatively capable of guiding the nation's destinies. The key principle is regulation from above. In politics, its operation is seen in the suppression of local self-government, the extinction of free parliamentary life, the concentration of power in instrumentalities of Fascist creation suited to the attain-

[1] M. Agronsky, "Racism in Italy," *Foreign Affairs*, Jan., 1939.

[2] An English translation of the Lateran Accord will be found in *Current History*, July, 1929, and the more significant parts in N. L. Hill and H. W. Stoke, *op. cit.*, 509–512. On the general subject, see V. A. Micheles, "The Lateran Accord," *Foreign Policy Assoc. Information Service*, July 10, 1929; G. Ireland, "The State of the City of the Vatican," *Amer. Jour. of Internat. Law*, Apr., 1933; F. A. Ridley, *The Papacy and Fascism* (London, 1937), and B. Williamson, *The Treaty of the Lateran* (London, 1929). Of historical interest are S. W. Halperin, *Italy and the Vatican at War* (Chicago, 1939), covering the period 1870–78, and the same author's *The Separation of Church and State in Italian Thought from Cavour to Mussolini* (Chicago, 1937).

ment of Fascist objectives. In the economic domain—nowhere more closely joined with the political—it is seen in the unusual participation of the state in industrial and financial enterprise, in the strong hand kept by the government on the employer and employee organizations forming the substructure of the corporative system, in the denial to capitalism of the opportunities for initiative and free decision which have commonly been regarded as essential to its successful operation. In the realm of education, the universities and secondary schools have been induced or compelled to stress Italian culture on nationalistic lines, and in general to propagate Fascist viewpoints and principles;[1] while for the whole body of youth, emphasis has been placed on physical (with a strong admixture of military) training. The press has been muzzled not only by government-made rules which determine even the number of pages that a newspaper may contain, but by a rigid censorship under which virtually nothing having conceivable political significance may be printed unless supplied or approved (generally the former) by the Ministry of Popular Culture, actual falsification is rare, but news is extensively suppressed.

OPPOSITION

It goes without saying that a régime of this nature could not be imposed upon a people habituated to a reasonable amount of liberty without stirring criticism and opposition; and although this side of the picture has been kept as much as possible from the eyes of the world, there is no denying that the Fascist order has had plenty of opponents, or that its adherents have freely resorted to means, more or less legal, of making the existence of such persons uncomfortable. From first to last, those who have criticized *Il Duce*, resisted his measures, or withheld support, have been effectively silenced. Some, like Matteotti, have been ruthlessly put out of the way. Others have been sentenced to Lipari as political prisoners. Still others, including numerous men of distinction, have sought safety in France, Belgium, the United States, or other countries. For those who find themselves in dissent, the specious Fascist assertion that criticism is welcomed, but not opposition, affords cold comfort; for in practice criticism can usually be made to look very much like opposition. To be sure, we are told that of non-Fascists—in the sense of people genuinely out of sympathy with the régime—there are few; the new order, we are assured, has the cordial support of an overwhelming majority of the population. *Emigré* opponents, however, bear different testimony. Conceding that in various material ways the nation has profited from Fascist rule and nowadays counts for more in the councils of Europe and the

[1] M. Ascoli, "Education in Fascist Italy," *Social Research*, Sept., 1937.

world than perhaps at any time since the rise of the united kingdom, they nevertheless tell of great numbers of Italians of all classes who, at heart hostile to the régime, merely endure it while waiting for its sudden or slow demise; and they insist that no government which so brutally stifles all free expression of opinion can possibly become a permanent feature of Italian political life.[1]

AN UNCERTAIN OUTLOOK

What the future holds in store, no man can say. If we believe with some that democracy has shot its bolt and that the world is in our troubled day entering a long era of authoritarianism, the conclusion will be that fascism, or something like it, will last; and if it lasts anywhere, Italy would seem to be as likely an area for it as any. If, on the other hand, the present authoritarian reaction be viewed as flowing from only a temporary aberration, with liberty predestined to regain in time the ground that it has lost, one may have faith to believe that Italy will share in the great recovery. Even so, fascism may not so completely disappear as to leave no trace. On the contrary, as a corrective of governmental ineptitude (standing sorely in need of correction), it may prove to have rendered service; and something of its better side may remain to color governmental structures and procedures for a very long time to come.

[1] Among noteworthy criticisms of the régime is G. Salvemini, *The Fascist Dictatorship in Italy* (New York, 1927); among notable defenses, L. Villari, *The Fascist Experiment* (London, 1924), and *Italy* (London, 1929). The first author is a former professor of history in the University of Florence, now living in exile, the second has been a Fascist propagandist emissary in London. Trenchant criticism is to be found also in Count C Sforza, *Makers of Modern Europe* (Indianapolis, 1930), Chap xxxviii, and *European Dictatorships* (New York, 1931), Chaps. ii–v. The author is an Italian senator who lives in exile and frequently lectures in America. An illuminating bit of reading is C. Haider, "The Meaning and Significance of Fascism," *Polit Sci Quar.*, Dec, 1933, elaborated considerably in the same writer's *Do We Want Fascism?* (New York, 1934), 74–130 See also M. T. Florinsky, *Fascism and National Socialism* (New York, 1936), and M. Ascoli and A. Feiler, *Fascism for Whom?* (New York, 1938).

CHAPTER XLIII

The Rise of the Soviet Régime

SOMEWHAT more than 20 years ago, a world torn by the greatest war in history [1] witnessed also the earlier stages of one of the greatest of revolutions. It is customary to think of the French Revolution as—measured by its consequences—the most significant cataclysm of the kind in the modern era. Quite possibly, historians a hundred years hence will still be of that opinion. Viewed as an overturn in a single country, however, the Bolshevik revolution in Russia, starting in the autumn of 1917, far transcended the French. Like the latter, it put an end to an old and powerful monarchy, swept an established church off its foundations, wiped out a privileged aristocracy, cancelled extensive property rights, and challenged an entire existing order of economy and thought. But whereas the earlier upheaval, after momentarily threatening to turn society upside down, ended by merely transferring political and economic power to the middle-class, the later one struck down both the upper classes and such scanty middle-class elements as existed and thrust complete control not only of government, national and local, but also of the structure and processes of industry, transportation, and agriculture, into the untried and untrained hands of the workers and their revolutionary leaders. The upshot was the rise of a governmental system unique in the annals of politics, and of a socio-economic régime constituting the greatest experiment of its kind in mankind's long experience. Marxist doctrine, proletarian monopoly of power, one-party dictatorship, economic regimentation—these are salient features of a new Bolshevist order which for years the world expected to see go down in collapse, but which nevertheless, reoriented at various points in

A STUPENDOUS REVOLUTION

[1] To the date mentioned, at all events. What the conflict starting in Europe as these pages were printed (in early autumn of 1939) will develop into, time alone can reveal.

the light of practical experience, seems today more strongly entrenched than ever before.

TWO EUROPES

In consequence, two Europes confront each other across the eighteen-hundred-mile boundary line which separates Finland, Estonia, Latvia, Poland, and Rumania on the west from the Union of Soviet Socialist Republics on the east. One is bourgeois, capitalist, and to a considerable extent fascist, the other is proletarian, socialist, and officially pointed toward communism. So unlike, indeed, are the two that, in a sense, the closer one approaches the Russian border, travelling eastward, the farther off one is. In America, or even Britain, the régime centering at Moscow is geographically so remote that it can be contemplated somewhat sentimentally, and even tolerantly. But Germans, Poles, and others who live within its shadow view it more realistically, seeing in it an imminent menace against which they must exercise unremitting vigilance. To be sure, 20 years of contact along the frontiers has inevitably resulted in a certain amount of accommodation: diplomatic relations have been established or resumed, treaties of non-aggression have been entered into; commercial and financial dealings have been revived. Propaganda directed from Moscow seems less dangerous today than formerly; world revolution is no longer openly proclaimed as an objective. The contagion of Communist ideas, aims, and policies continues, however, to be feared, and a delicate international situation in which the Soviet Union is one of the most uncertain factors springs to no small extent from the conviction that an ultimate aim of those who guide the Union's destinies is to bring capitalism to its knees in progressively wider areas and eventually to bolshevize all Europe and Asia. Whether for fascist Germany and Italy or for democratic France and Scandinavia, this belief still imposes a Himalayan barrier athwart Europe from the Baltic to the Black.[1]

A POLYGLOT "EURASIAN" EMPIRE

Technically, the Union of Soviet Socialist Republics, as it now stands, is not Russia, but precisely what the name implies—a federation of 11 socialist republics, of Russian nationality or otherwise, making

[1] The foregoing paragraph was written *before* Germany and the USSR. startled the world (on August 24, 1939) with a wholly unexpected pact of non-aggression, believed in many quarters to involve an even closer understanding than appeared Within a week after the *coup*, Germany was at war with Poland, Great Britain, and France. Although employing many similar techniques, fascism and communism remain fundamentally antithetic in policies and objectives, and the German-USSR. *rapprochement* can hardly be regarded as more than strategic. It would be futile, however, to attempt to forecast its consequences for Europe and the world, and meanwhile the observations made above may be allowed to stand.

common use of the soviet form of government; a German soviet republic might as readily belong to it as, for example. the existing Ukrainian Socialist Republic. As a matter of fact, however, all of the territory in the Union today was part of the Russian Empire before the Revolution; and although the two are not identical geographically (chiefly on account of war-time losses of territory to Poland and other "succession" states along the western border), the starting point for a study of the Soviet Union is manifestly the Empire of the tsars. An unbrokenly contiguous dominion of continental proportions covering half of Europe and a third of Asia (a sixth of the land surface of the globe), stretching ever monotonously before the eye, with the sharpest contrasts of heat and cold, flood and drought, opulence and misery; a chaos of races and creeds and a bable of tongues; historically in the main, but not wholly, European; geographically largely, but not entirely, Asiatic; a world within itself and a world between worlds—such was the Russia of pre-war and pre-revolution days. Known to the ancient Greeks as "outer darkness," the land of the Scythian winter, the country has been no less an enigma, or riddle, to the modern world; Russians themselves find difficulty in explaining it. Even its European segment was of mixed origin. When, in the early centuries of the Christian era, that branch of the Aryan family known as the Slavs dispersed from its original home on the northern slopes of the Carpathians, those portions that did not turn westward to form the later Poles, Czechs, and Slovaks, or southward to become the ancestors of the Serbs, Croats, and Slovenes, poured eastward into the great plains of Ukrainia and beyond, where they found and mixed with the Asiatic Finns, and later mixed also with the equally Asiatic Mongols, who held the land in tribute for two hundred and fifty years. Increasing in numbers with that fecundity which still characterizes the Russian people, and spreading northward, eastward, and southward, they gradually subdivided (beginning in the thirteenth century) into the Great Russians in the north, the Little Russians or Ukrainians in the center, and the White Russians to the west.

Tougher than their brethren and more advantageously located for the purpose, the Great Russians became preeminently the pioneering, colonizing, conquering branch of the family. The eastward urge which quickly carried them to the Urals never died out; what the Far West has been for Americans, the East has ever been for Russians. Refusing to recognize the low-lying ranges as in any sense a boundary, they pushed on and on—particularly in the sixteenth century—until in 1637 their venturesome explorers, havin

thousands of miles of Siberian waste, came out upon the Pacific coast at the mouth of the Ulya River. Indeed, the sea did not stop them; for Alaska was penetrated, and remained a Russian possession until sold to the United States in 1867.[1] To Great Russians, Little Russians, Finns, Jews, Letts, and Poles were therefore added Tartars, Bashkirs, Uzbegs, Turkomans, Mongolians, and what not, as constituent elements of the swarming, hybrid population of the expanding Empire, with the consequence that no fewer than 185 nationalities and 147 different languages and dialects are numbered within the bounds of the Soviet Union of today. With one-fourth of the population purely Asiatic, with the dominating Great Russians themselves strongly infused with Asiatic blood, and with deep strains of Asiatic influence showing in every aspect of life and culture, it is not strange that men debated—without ever settling—whether Russia was to be regarded as Eastern Europe or Western Asia. Properly, the country should be looked upon as neither European nor Asiatic, but rather as "Eurasian"—a term to be construed, not as signifying a combination of all Europe and all Asia, but as denoting instead a sort of third continent, the geographic and historic area constituting Greater Russia, without reference to the conventional, and in this connection wholly artificial, distinction between Europe and Asia.[2]

SIX CENTURIES OF POLITICAL DEVELOPMENT:

1. THE RISE OF TSARIST ABSOLUTISM

For the beginnings and growth of the Russian state, the reader must be referred to the many excellent historical works dealing with the subject.[3] Suffice it to say that from among various rival grand-duchies and principalities, with governments curiously compounded of monarchical, aristocratic, and democratic elements, there emerged in the early fourteenth century one known as the grand-duchy of Moscow, whose vigorous rulers gradually gained primacy and in time not only delivered Eastern Europe from a long-endured Mongol overlordship, but extended their own sway from the Urals to the Baltic. Outgrowing the not particularly distinctive designation of grand-duke, Ivan IV ("The Terrible"), early in the sixteenth century, took

[1] There were Russian settlements also in California, which, however, were abandoned in the 1840's.

[2] The ethnological and geographical aspects of Russia's development are explained with exceptional clearness in G. Vernadsky, *Political and Diplomatic History of Russia* (Boston, 1936), Chap i

[3] None is better than that of Vernadsky mentioned above. Others include R. Beazley, N. Forbes, and G. A Birkett, *Russia from the Varangians to the Bolsheviks* (Oxford, 1918), B. Pares, *A History of Russia* (rev. ed, New York, 1937), and V. O Kluchevsky, *A History of Russia*, trans. by C J Hogarth, 5 vols. (London, 1911–31).

to himself the title of "tsar" (a corruption of "Caesar"), suggestive —according to the Greek Orthodox divines whose faith had now been accepted in the country—of the "third Rome" [1] that Moscow was destined to become, and naturally of the imperial power which its master was later to wield throughout the Eastern world Gradually the institutions of the earlier grand-duchy, which originally had been a good deal like those of a great private domain, evolved into a system of state administration; and for hundreds of years, every circumstance surrounding the growth of the nation was favorable not only to monarchy, but to the upbuilding and maintenance of thoroughgoing autocracy. Most of the newer areas were brought in by conquest and required vigorous control; the popular assemblies characteristic of the little grand-duchies of earlier times were not adapted to the needs of a broad, expanding, and increasingly heterogeneous empire; strong Byzantine influence, exerted through the church and other channels, prompted development of the pomp and exclusiveness always associated with the Russian court, and of absolutist principles and practices generally; the country was isolated and, until late, not much affected by Western influences.

2. LIMITED REFORMS

There were, to be sure, as time went on, some developments and experiments in the direction of liberal, and even representative, government. Some were merely gestures; some wrought significant changes for a time—but always with absolutism in the end reasserting itself. No less an autocrat than Ivan IV permitted a *zemski sobor*, or national representative congress, to be convoked in 1550. But the assembly did not develop into a permanent piece of political machinery, and at best was an organ only of the ambitious *boyars*, or nobles, rather than of the people. Another national assembly elevated the Romanov dynasty to the throne in 1613, and for a generation continued to be convoked from time to time to aid in raising money. But it entirely missed the opportunity to impose restraints on the new ruling family after the manner of the English Parliament when accepting William and Mary toward the close of the same century; and it never gained more than advisory functions. In 1730, Empress Anne signed a document granting executive powers to a council and then tore it up, convinced that, after all, the nation wanted to be governed in the old way. Catherine II (1762–96) set up a "grand commission" to assist in a recodification of the national laws. But the body was not intended to be a regular parliament, and its deliberations proved so profitless that it was disbanded with its main

[1] Byzantium, or Constantinople, was conceived of as the second.

task still unperformed. Alexander I came to the throne in 1801 with liberal ideas, including a plan for giving the country a written constitution, to be prepared by an elected representative assembly. As tsar, he, however, drew back from the idea. Finally, Alexander II (1855–81), liberator of the serfs, came to a decision to establish representative national committees with power to give preliminary consideration to legislative proposals, but he was assassinated hardly 24 hours before the time when the decree was to have been promulgated. Down to the close of the nineteenth century, genuine and lasting advance toward popular control of affairs was achieved in the domain of local government only. Catherine II introduced elective municipal *dumas*, or councils, representing all classes of the urban populations. Alexander II, in addition to reconstructing the judicial system and further reorganizing municipal government, instituted in 1864 two sets of elective *zemstvos*, or assemblies—district zemstvos, chosen by the landholders (including the newly emancipated serfs), and provincial zemstvos, composed of representatives of the several district assemblies within the province, and empowered to provide roads, schools, and experimental farms and to serve other local needs.[1]

SITUATION AT THE OPENING OF THE PRESENT CENTURY

The twentieth century found autocracy still in the saddle. Sometimes it was benevolent, but always it was autocracy, challenging every liberal idea and setting itself resolutely against change. "In theory," according to one very good description of the political system as it stood a quarter of a century ago, "the tsar was the autocrat of all the Russias, his will was law, and to him both church and state were subject in every particular. The tsar was, of course, assisted by ministers in charge of the administration, but each minister was appointed by and responsible only to the tsar, the council of ministers had no organic unity, and the ministers came together only rarely and at the tsar's express command. It could therefore hardly be said that the ministers formed a cabinet. Moreover, the discretion allowed to ministers in matters of policy was slight. . . . But great as his powers might be in theory, in practice

[1] It should be added that the peasant villages (*mirs*) were practically autonomous until Alexander III (1881–94) placed them under the supervision of wealthy landed proprietors. The general development of government to the close of the nineteenth century is sketched in illuminating fashion in M. Kovalevsky, *Russian Political Institutions* (Chicago, 1902), Chap. II. Cf. G. Vernadsky, *Political and Diplomatic History of Russia*, Chaps. XIII–XXV, and P. Milyoukov, *Russia and Its Crisis* (Chicago, 1905).

the tsar could do little. During the quarter of a century before 1914, the actual direction of affairs fell into the hands of a court which was notorious throughout Europe for its corruption and for the prevalence of dark forces, while the routine work of government was carried on by a highly centralized bureaucratic machine which lumbered along in its autocratic fashion in spite of the almost incredible ignorance and dishonesty with which it was encumbered." [1]

Forces of protest, however, were increasing and growing more articulate. The zemstvos became rallying points of liberalism, and at their second general congress in 1904 their spokesmen called in no uncertain terms for constitutional government, including a national parliament. Equally significant was the appearance of so-called political parties—not, of course, broadly based parties like those of democratic countries, but groups of agitators and propagandists urging political and economic reforms, and reaching out for followings among the urban workers and the peasants. First in importance among these was the Russian Social Democratic Labor party, organized in 1898 on the model of the German Social Democracy, and subscribing in the main to the teachings of Karl Marx. A second, the Social Revolutionary party, formed in 1901, appealed primarily to the peasants. A third, the Union of Liberation (known after 1905 as the Constitutional Democrats, or "Kadets"), was organized in 1903 mainly by merchants, manufacturers, and middle-class intellectuals, and based its program, not upon Marx, but upon the political teachings of constitutional and democratic groups of Western Europe and America. All of these organizations existed in defiance of law, all were forced to resort to underground methods and to lead a hand-to-mouth existence.

REFORMS OF 1905: THE CONSTITUTION AND THE DUMA

With criticism steadily mounting and social conditions growing ever more provocative of trouble, matters drifted until the imperial government unwisely led the country, in 1904, into war with Japan. Defeat followed defeat, on land and on sea, precipitating a popular reaction from which the forces of revolution and reform drew unexpected opportunity. So serious did strikes, riots, and other forms of public disorder become that in August, 1905, an imperial manifesto announced that a nation-wide representative assembly, with deliberative though not legislative functions, would presently be established as an Imperial Duma. As only a half-way measure, this concession, however, satisfied no one; and,

[1] J W Swain, *The Beginning of the Twentieth Century* (New York, 1933), 112.

conditions growing steadily worse, the harassed authorities were driven, on October 30, as a means of staving off social revolution, to issue a new manifesto giving the country what was to all intents and purposes a constitution. The Duma was to be constructed so as to represent all classes of the people under a democratic form of suffrage; no law was thenceforth to become effective without this body's approval, the ministers were to be formed into a council, with a prime minister at its head, as in Western countries (even though, like the chancellor in contemporary Germany, that key official was still to be responsible only to the titular head of the state); a full grant of civil liberty was added—inviolability of person, and freedom of thought, speech, assembly, and organization. A few weeks afterwards, another rescript set up the promised electoral system, giving votes to the great mass of the male population, including peasants and urban workers. Thenceforth, the tsar was to share the government of Russia with duly elected representatives of his people.[1]

THE OUTCOME

The political transformation thus auspiciously begun did not work out satisfactorily. Peace with Japan, restored under terms of the Treaty of Portsmouth, liberated the government to some extent from the difficulties which had compelled it to make concessions; radical elements that desired revolution at all costs refused to be diverted from their objective; even the more moderate reform forces persisted in dissipating their strength in factional strife, each group bent on the realization of its own particular program. The upshot was that constitutional, parliamentary government was practically strangled at its birth. Even before the first Duma met, a decree of March, 1906, revising the old Fundamental Laws of the Empire to serve as a constitution, associated with the popular body a second chamber, known as the Council of the Empire, and composed equally of members appointed by the tsar and elected by the nobility, zemstvos, and university faculties. At the same time, the fundamental laws, the composition of the legislative bodies, the army and navy, and foreign relations were enumerated as matters which the two houses should not so much as discuss.[2] When it is observed further that no measure could be considered in any case without the government's consent, that the system contained no hint of responsibility of ministers to the people's representatives, that the tsar wielded an absolute veto over

[1] For the texts of these important documents, see W. F. Dodd, *Modern Constitutions*, II, 181–195.

[2] *Ibid.*

all legislation, could prorogue or dissolve the Duma at will, and enjoyed unlimited ordinance power when the Duma was not in session, it goes without saying that the new representative assembly was endowed with no great amount of actual authority.

No sooner was the first Duma elected than it appeared that it would be dominated by elements—chiefly the Constitutional Democrats—distinctly hostile to the government;[1] and when, upon assembling in May, 1906, it fell to discussing a bill looking to expropriation of the great estates in the interest of the peasants, and even began talking about steps necessary to launch a cabinet system, it was dissolved and election of another one ordered. The result was, from the view-point of the government, no better; indeed it was worse, for notwithstanding that the elections were widely tampered with, the revolutionaries now participated freely, and the second Duma was even more liberal than the first. Consequently, after being tolerated for a brief time, it went the way of its predecessor. Then the government concluded that it had made a mistake in sanctioning an electoral system that enabled such things to happen, and before ordering another election it arbitrarily changed the scheme, sharply curtailing representation from the Polish and Caucasus districts, shamelessly gerrymandering other areas, and introducing a complicated class system calculated to ensure the return of majorities amenable to control.[2] The expedient worked, and the third Duma, proving more tractable, was permitted to live out its legal term of five years. The fourth, elected in 1912 on similar lines, was in existence when the World War began, and survived until 1917.

The revolution of 1905 was not entirely fruitless. The Duma, to be sure, was no such free and vigorous national assembly as the moderate reformers desired, indeed, the unhappy experience of a decade had, by 1914, pretty well brought these elements to the conviction that true parliamentary government could never be attained in Russia by ordinary constitutional means. Even in its later less democratic form, however, the assembly reflected public opinion to some extent, furnished a forum for the discussion of national affairs, and occasionally exerted some influence on the government's policies. Clearly it served to familiarize the country with the idea of representative institutions on a national scale, even

[1] At that, the two avowedly revolutionary parties, Social Democrats and Social Revolutionaries, had boycotted the elections

[2] S N Harper, *The New Electoral Law for the Russian Duma* (Chicago, 1908). The revised electoral system is described in detail in C Seymour and D. F. Frary, *How the World Votes*, II, Chaps xxvi–xxvii.

though, all in all, the Empire's government was still, in 1914, a thinly veiled autocracy.[1]

POLITICAL TENSION DURING THE WORLD WAR

Hardly anything less than superhuman skill on the part of the monarch and his ministers could have carried the Russian political system of pre-war days through the experiences of 1914–18 intact. But Nicholas II was far from being superhumanly clever, and, with few exceptions, the people who surrounded and influenced him—whether the ministers who passed in dreary succession across the political stage, the members of his immediate household, or the hangers-on at the court—were stupid, reactionary, and corrupt. The result was that under the impact of the War the government tottered and collapsed, forces of revolution burst all restraints, the tsar and his family were brutally murdered, the Red Terror swept the land as fire driven by the wind, society was turned upside down, and the once imposing Empire became only a memory. The outbreak of the War was the signal for a demonstration of patriotic feeling almost as unanimous and impressive as the show of public sentiment in France, Germany, and other belligerent countries. All elements except the Bolshevik wing of the Social Democrats pledged the government unqualified support. However, the stupendous losses of men, the German conquest of the Polish and other provinces, and the sufferings of the masses, produced, within the first year, grave discontent, and in September, 1915, the moderate groups in the Duma—now fast becoming a body with a will of its own—drew together in a "progressive *bloc*" whose purpose was to urge upon the government immediate and drastic reforms. Strong demand was forthwith made for a restoration of democratic suffrage and for a full parliamentary scheme of government. Far from heeding it, however, the embittered tsar allowed himself to be swayed in the direction of extreme reaction, and a breach arose between the government and the reformers which widened steadily as the second year of the War advanced. The winter of 1916–17 brought matters to a crisis. The weak-willed tsar was completely dominated

[1] On the revolution of 1905 and after, see G. Vernadsky, *Political and Diplomatic History of Russia*, Chap. xxvi, P. Milyoukov, *Russia and Its Crisis* (Chicago, 1905), B. Pares, *Russia and Reform* (London, 1907), S. A. Korff, *Autocracy and Revolution in Russia* (New York, 1923), and from a Marxist point of view, M. N. Pokrovsky, *Brief History of Russia*, trans. by D. S. Mirsky (New York, 1933), II. Cf. E. A. Goldenweiser, "The Russian Duma," *Polit. Sci. Quar.*, Sept., 1914. The events of October, 1905, are narrated graphically by Count Sergius Witte (first prime minister under the new *régime*) in his *Memoirs*, trans. by A. Yarmolinsky (New York, 1921). The "political heritage" of the Russia of 1914 is described briefly and simply in S. N. Harper, *The Government of the Soviet Union* (New York, 1938), Chap. II.

by the tsarina, who, in turn, was under the spell of a Siberian peasant charlatan with hypnotic power, Gregory Rasputin;[1] ministers and bureaucrats brazenly bartered with the enemy and lined their pockets with the proceeds of their treachery; gross and willful mismanagement in government circles cost the lives of countless thousands of soldiers and brought untold suffering to other thousands and to the civilian population in all parts of the country; although doggedly holding its hard-won positions, the army at the front was war-weary and distrustful of its leaders; conscripts in the rear were listening eagerly to socialist, defeatist, and revolutionary propaganda; economic insecurity was helping undermine such morale as remained. When, after a protracted recess, the Duma was reassembled in February, 1917, the government met its protests with obvious determination to make no concessions and to stamp out the entire liberal movement. Preservation of autocracy and of the privileges of the bureaucracy seemed to have displaced the winning of the war as the chief concern at court, and despair of any improvement under the existing political régime became general.

THE BOURGEOIS REVOLUTION OF MARCH, 1917

The upshot was revolution. With disorder threatened in the capital at the hands of hungry and discontented soldiers and workmen, and with the imperial government itself showing unmistakable signs of distintegration, a *ukaz* proroguing the Duma was issued on March 11. Far from obeying, the body assembled in one of the palaces and sought to curb, or at least to guide, the forces of rebellion. Representing chiefly the more substantial elements of the population, the Duma leaders by no means relished a proletarian uprising, and every effort was made to induce the government, even at the eleventh hour, to forestall the threatened revolution by adopting a liberal and conciliatory policy. But the court reactionaries would not be convinced. Perhaps disaffection had gone too far to be checked. At all events, when the troops were sent out to disperse the throngs surging through the streets and demanding food, they joined the mob instead, and the city was forthwith given over to revolution. The great prison fortress of Saint Peter and Saint Paul was stormed and the prisoners released; ministers and other bureaucrats were arrested and slain or imprisoned, a Petrograd[2]

[1] Rasputin, to be sure, was assassinated on December 30, 1916, but his death merely embittered both tsar and tsarina.

[2] As a demonstration of Pan-Slav feeling, the name of the national capital was changed, a few days after the War began, to the Slavic equivalent of the German-sounding "Petersburg," *i e*, "Petrograd."

soviet,[1] or council, of workers' and soldiers' deputies was set up; from afar, news came that the armies in the field had declared for an end of the old régime. Still hoping to guide the revolution along reasonably moderate lines, the Duma laid claim to full power, appointed a provisional government with Prince George Lvov, a Constitutional Democrat, as chairman, and procured, on March 15, the abdication of the now frightened and despondent Nicholas II. When forsaking his throne, the tsar designated his brother, the Grand Duke Michael Alexandrovich, as his successor and Prince Lvov as head of the ministry. The latter arrangement gave some show of legality to the new order. But as for the grand duke, he refused to accept so dubious a succession; and the rule of the Romanovs in Russia—at the last so weak that it fell almost without being pushed—was ended.[2]

THE PROVISIONAL GOVERNMENT AND ITS DIFFICULTIES

The new government promptly won the recognition of the United States and of the Entente Powers. Furthermore, it commended itself to liberals throughout the world by the manifest sincerity with which it proclaimed democratic principles and asserted the rights of the people, especially the subject nationalities. The political regeneration of Russia was, however, too vast an undertaking to be carried out so quickly and so easily. The collapse of the old order inevitably became the signal for particularistic manifestations, long repressed, against the unity of the polygot nation; inexperienced in self-government on a large scale, the people were sure to stagger under the suddenly imposed responsibilities of the new régime; the habit of hating the tsarist government had bred a distrust of, and impatience with, government in general. The result was that the Lvov provisional government ran at once into insur-

[1] The "soviet" concept seems to have originated in England, where a follower of Robert Owen in the early nineteenth century (though without that leader's approval) propounded a plan for dispensing with the House of Commons and organizing a government based on councils representing the various trades It reappeared in France in 1848, when the short-lived Luxembourg Commission was organized from delegates elected by trades from the various workshops to represent the Paris proletariat Its first appearance in Russia was in 1905, when a strike committee—the first real soviet—was set up in St. Petersburg to carry on the general strike which forced the granting of the October manifesto. Disappearing as soon as the reaction set in, the institution is not heard of again until 1917. See p. 871 below. In Germany and other countries, soviets sprang up like mushrooms in the turbulent years 1918–19, and both Hungary and Bavaria had short-lived soviet governments in the last-mentioned year. Soviets, however, took firm root nowhere except in Russia, where they became the basic units in all subsequent political organization. They disappeared even in areas like Finland which broke off from Russia

[2] Nicholas II and the members of his family, after being held prisoners at various places, were executed at the Ural town of Ekaterinburg on July 18, 1918

mountable difficulties. These cannot be described here; but the fundamental trouble lay in the fact that whereas the new government was a bourgeois government which proposed to reorganize Russia on a constitutional basis after the fashion of Western states, radical leaders with a steadily growing following cared not at all for that sort of thing and looked rather to some form of economic-political organization that would bring power mainly or entirely into the hands of the working and peasant classes. From the outset, the provisional government, representing the political revolution, was meagerly supported outside of the capital, while extra-legal soviets of workmen's, soldiers', and peasants' deputies—organized throughout the country on the model of the Petrograd soviet of March, 1917, and representing the social revolution—increasingly drew the interest and support of the masses. These soviets were dominated by Social Revolutionaries and Social Democrats, they fully understood that the Lvov government aimed at middle-class rule; they were prepared to be satisfied with nothing less than economic and social reconstruction at the hands of a government dominated by peasants and workers, and their activities not only demoralized the armies in the field, but at all stages paralyzed the arm of the provisional government.

As weeks passed, the breach between the provisional government and the elements represented in the soviets widened steadily, and in the early summer it became necessary, in order to hold things together at all, to open the ministry to five members representing the Petrograd soviet.[1] This intensified internal differences from which the government already suffered and left it even more irresolute than before. The soviets steadily grew more outspoken in their opposition to the prolongation of the War; propaganda of a dozen sorts—pacifist, pro-German, nationalist—produced appalling discord and unrest. With the country fast slipping into anarchy, the situation was ripe for the rise to power of any party or group of men which could put itself dynamically behind a definite program and mobilize popular feeling in its behalf. Such a party promptly appeared in the form of the ultra-radical Bolsheviki.[2]

[1] It is to be observed, however, that Alexander Kerensky, although nominally a member of the executive committee of the soviet, was a leading member of the provisional government from the beginning. From July, he was its official head, in succession to Lvov.

[2] The revolution of March, 1917, and the failure of the provisional government are dealt with in G Vernadsky, *op cit*, Chap. xxvii, E Vandervelde, *Three Aspects of the Russian Revolution* (New York, 1919), A J. Sack, *The Birth of Russian Democracy* (New York, 1919), and many other books A valuable first-hand account of certain phases by a leading actor in the drama is A F. Kerensky, *The Prelude to Bolshevism* (New York, 1919).

BOLSHEVIKI AND MENSHEVIKI

Russian socialists in the earlier twentieth century fell into two main schools, or parties, already mentioned—the Social Revolutionaries and the Social Democrats. The former, recognizing that the country was, and must long remain, agricultural, was interested principally in arousing the illiterate and apathetic peasantry (comprising nearly four-fifths of the entire population) to revolt with a view to gaining individual proprietorship of land still owned for the most part by the state or the nobility or held in common by the villages, or *mirs*.[1] There was no party of quite the same nature in Western Europe, for no Western country presented a situation of quite the same kind. The Social Democrats, on the other hand, concerned themselves primarily with the urbanized industrial workers, whom they considered the shock troops of the coming revolution. Drawing their inspiration principally from Marx, they had more in common with socialist parties elsewhere. Both parties were split into moderate and radical factions, each of which tended at times to merge with the corresponding faction of the other party. The moderate and radical wings of the Social Revolutionaries were as a rule referred to as the Right and the Left. The Social Democrats were even more sharply divided into the Bolsheviki ("Majority") and Mensheviki ("Minority"). This schism arose at the second congress of the party, held at London in 1903, and reflected no particular difference in aim or objective, but decided difference of opinion upon policy and method. Like the orthodox, evolutionary socialists of Germany and France, the Mensheviki believed that the socialist state was to be attained gradually and by peaceful means, they envisaged a large and more moderate political party on the pattern of the German Social Democracy; and they were prepared to cooperate with other liberal, but non-socialist, elements. Like Western communists and other extremists, the Bolsheviks, on the other hand, scorned slow, peaceful, political methods; indeed, long before 1917 they had advanced to the point where they would be satisfied with nothing short of a cataclysmic, world-wide overthrow of the capitalistic order, to be followed by a dictatorship of the proletariat. All of the parties and factions as yet drew their leadership, and in truth much of their membership, not from the workers themselves, but from the intelligentsia of middle-class, or even noble, origin.

[1] For excellent accounts of the agrarian situation, see G T Robinson, *Rural Russia under the Old Régime* (New York, 1932), and G. Pavlovsky, *Agricultural Russia on the Eve of the Revolution* (London, 1930). A briefer analysis is V M. Dean, "Russia's Agrarian Problem," *Foreign Policy Assoc. Information Service*, VI, No. 10 (July 23, 1930).

Prominent among the Social Revolutionaries were the editor Victor Tshernov and the indomitable Catherine Breshkovskaya.[1] Leading Mensheviki included L. Martov, George Plekhanov, and Lev D. Bronstein, the last-mentioned a Jew who, as Leon Trotsky, later became the tactician of the earlier stages of the Bolshevik revolution. Chief among the Bolsheviks was Vladimir Ilyitch Ulyanov, son of a government inspector of schools who had received a patent of nobility from the government, and destined to fame under the pseudonym of Nicolai Lenin.[2]

THE BOLSHEVIK REVOLUTION OF 1917

Although constituting a majority in the London congress where the name was acquired, the Bolsheviki originally formed only a small minority of the Russian socialists generally, and not only did they totally fail to realize their purposes in 1905, but even in 1917 they formed no very important element in the soviets as first organized. They, however, were unencumbered by any relations with or responsibility for the provisional government,[3] they were blessed with able and not too scrupulous leaders; and they had a program which, although incongruously aimed at forcing a Marxist system devised in terms of an industrial society upon a decidedly rural and agricultural people, nevertheless could be counted upon to prove attractive to an uneducated, impressionable, war-weary people who wanted, not constitutionalism and democracy (of which they still knew little), but land, bread, and peace. The main points in this program were: an immediate armistice, to be followed by peace negotiated by representatives of the proletariat; confiscation of all landed estates and parcelling of the soil among the peasants, who were everywhere to be organized in soviets, full and immediate management of all factories and mines by the workers, organized similarly; nationalization of all production and distribution; repudiation of the tsarist national debt; autonomy for national minorities; and organization, on the basis of the urban and rural soviets, of a government controlled exclusively by (or at least in the name

[1] See K. Breshkovskaya, *Hidden Springs of the Russian Revolution* (Stanford University, 1931).

[2] Having been arrested and deported to Siberia at the age of 26 because of his radical political activities, Lenin settled in Switzerland in 1900, remaining there (except for a brief sojourn in his home country in 1905–07) until 1917. His paper, *Iskra* ("The Spark"), published at Zurich, became the earliest Bolshevik party organ. See Leon Trotsky, *Lenin* (New York, 1925), *ibid*, *My Life* (New York, 1930), G. Vernadsky, *Lenin, Red Dictator* (New Haven, 1931). Cf. N. Bardyaev, *The Origin of Russian Communism* (London, 1937), and A. Rosenberg, *History of Bolshevism from Marx to the First Five-Year Plan* (London, 1934).

[3] Many Mensheviki served as ministers in this government.

of) the masses. A dictatorship of the proletariat was the objective; "all power to the soviets," the slogan.

Notwithstanding that as late as June, 1917, when the first All-Russian Congress of Soviets was convoked, the Bolsheviki contributed hardly more than a sixth of the delegates,[1] clever propaganda—now directed on the spot by the indomitable Lenin—brought the party by the end of the summer into control of (even though not as yet numerical preponderance in) the soviets; and the growing futility of the provisional government's efforts, rendered the more hopeless by the breakdown of the military establishment on the Western front, foreshadowed both the collapse of Russia in arms and a transfer of power to the Bolshevik-controlled councils. An attempt to seize the reins in July failed, and the provisional government, thenceforth under Kerensky's leadership, labored on to keep the military and political situation in hand. But every plan of rehabilitation failed, and as weeks passed it became clearer that both army and government were simply going to pieces. Elections to a second All-Russian Congress of Soviets, to be convened at Petrograd on November 7, gave no party an absolute majority. But on the night of November 6, carefully rehearsed Bolshevik soldiery—detachments of the famous Red Guards—occupied the Winter Palace and other government buildings; the local garrisons remained inactive or went over to the revolution; and on the morning of the meeting day of the Congress, the members of the provisional government—Kerensky alone escaping—were placed under arrest. Confronted thus with an accomplished *coup* when it convened, the Congress promptly fell into line. The Mensheviks and a right-wing element of the Social Revolutionaries absented themselves, left-wing Social Revolutionaries threw their support to the Bolsheviks, and with the radicals in full control, the Congress forthwith "regularized" what had been done by assuming supreme authority over the nation, proclaiming a Russian Socialist Federated Soviet Republic, and setting up, as a sort of cabinet, a Council of People's Commissars, selected mainly from the ranks of a newly chosen Central Executive Committee of the Bolshevik party, with Lenin as premier and Trotsky as "people's commissar for foreign affairs." A "decree of peace" forthwith announced that so far as Russia was concerned, the World War was over;[2] a "decree of land" ordered a partitioning

[1] The rest were Social Revolutionaries and Mensheviks, in almost equal numbers

[2] With untold numbers of soldiers forsaking their posts on the Western and Caucasian fronts and streaming back to their native villages, Trotsky opened peace negotiations with Germany late in December. In the humiliating treaty of Brest-Litovsk, signed on March 3, 1918, Russia indeed obtained peace, but also acknowl-

of large estates among the peasants and stamped with approval a general plan of land nationalization previously prepared by the Social Revolutionaries, a "decree of industry" presently proclaimed the control of workers' committees over industrial plants.

CONSOLIDATING THE NEW RÉGIME

By stages, yet in a space of less than eight months, the most reactionary government in Europe had given way to the most radical. But could the new régime, at first localized entirely in the capital, and personalized in a little group of commissars sitting on kitchen chairs around a pine table in a former girls' boarding school, actually establish itself and endure? Most people, even in Russia, thought not; even after months and years had passed, the world still expected to hear, almost any day, that the end had come. It was the old story, however, of a compact, determined, and ably led minority having its way against a huge but amorphous and inarticulate majority. Not that the victory was won in a week, or a year. Even by the summer of 1918, when control had been extended over the larger part of what remained of European Russia, the new order had only begun its real fight for existence—a fight of exceptional severity through the next three years, not only against counter-revolution (involving civil war on many fronts) and foreign intervention,[1] but against passive resistance, sabotage, famine, and other less spectacular but equally weighty obstacles, including the necessity of relying almost exclusively on the country's own disintegrated resources. With "strike quickly, strike hard, strike secretly" as its principle of action, Lenin's new engine of power, however—although an Ishmael among the governments of the world—so successfully swept resistance before it as both to paralyze its foes and confound those who prophesied its destruction. "We have shown," said Trotsky to the Petrograd soviet, "that we can take the power. We must show that we are able to keep it. I summon you to a ruthless fight." Of ruthlessness, there was indeed no lack. The Red Terror, betokening, as it seemed to startled Westerners, almost a relapse into Mongol savagery, was loosed upon the country, and nobles, landowners,

edged the independence of Poland, Finland, Lithuania, Estonia, part of Transcaucasia, and even the Ukrainian Republic which a short while previously had chosen to go its own way. Events occurring when these pages were closed afforded a tragic commentary on this settlement. Poland was being partitioned between Germany and the U.S.S.R., while the Baltic states seemed faced with reconquest from the east.

[1] G. Stewart, *The White Armies of Russia, A Chronicle of Counter-Revolution and Allied Intervention* (New York, 1933). Anti-Bolshevik elements, in contradistinction to the "Reds," came to be known as the "Whites."

tsarist officials, and unsympathetic intelligentsia were imprisoned, executed, or exiled by the thousands.[1] There was ruthlessness, too, toward institutions no less than toward persons. Land, banks, and industries were ear-marked for nationalization; the church was disestablished and its property turned to secular uses; and when, in January, 1918, a national constituent assembly, elected under democratic arrangements devised by Kerensky's government (and significantly containing not over 40 Bolsheviks out of a total of 703 members), met in Petrograd and began passing resolutions hostile to the new order, it was summarily dissolved and the dictatorship of the proletariat triumphantly reasserted.

To maintain itself in power was naturally the first concern of the little group that found itself on top. But beyond that was the huge task of rebuilding a backward and demoralized nation on totally untried lines. In this, of course, lay the real revolution; and for two decades the work has proceeded, with many a stop and start and many a compromise, yet with (for better or worse) a surprising amount of actual achievement, especially when one considers the enormous areas and populations to be reached, the magnitude of the transformations undertaken, the hostility encountered both at home and abroad, and the brevity of the period during which the great experiment has been under way. The ultimate outcome remains to be disclosed. But whatever it may be, the world will have much to learn from the spectacle that has been unfolded.[2]

[1] The principal agency of the Terror was the *Cheka* (so named from the initials of the Russian words for "extraordinary commission"), a special police establishment organized in December, 1917, to deal with counter-revolutionists. See p. 908 below. In fairness, it should be added that the counter-revolutionists were hardly milder in their methods. The ultimate triumph of the new régime was, of course, the handiwork largely of a Red Army of Workers and Peasants, recruited and organized by Trotsky (then commissar of war) early in 1918, and numbering, at its maximum, nearly five million men.

[2] The fortunes of Russian national government throughout the war period are traced authoritatively in P. Gronsky and N. J. Astrov, *The War and the Russian Government* (New Haven, 1929), 1–127. The collapse of the provisional government of 1917 and the launching of the Bolshevik régime are outlined clearly in G. Vernadsky, *op. cit.*, Chaps. xxvii–xxviii, and M. T. Florinsky, *The End of the Russian Empire* (New Haven, 1931). Fuller accounts will be found in W. H. Chamberlin, *The Russian Revolution, 1917–1921*, 2 vols. (New York, 1935), J. Mavor, *The Russian Revolution* (New York, 1928), and G. Vernadsky, *The Russian Revolution, 1917–1931* (New York, 1932). Important books by participants include A. Kerensky, *The Catastrophe* (New York, 1927), L. Trotsky, *History of the Russian Revolution*, 3 vols. (London, 1932), and V. I. Lenin, *Collected Works*, XX, "The Revolution of 1917" (speeches and writings of that year), also in two vol. ed., *The Revolution of 1917* (New York, 1932). The technique of the revolution in its initial stages is described interestingly in C. Malaparte, *Coup d'état*, trans. by S. Saunders (New York, 1932), Chaps. i–ii.

CHAPTER XLIV

The Communist Party

WHEREVER the totalitarian type of state is encountered, all power—not only of government in the narrower sense, but of economic and social regulation on the broadest lines—is concentrated in a single integrated and relatively restricted political element or group. In Italy, this controlling force is the Fascist party; in Germany, the National Socialist party, in the U.S.S.R., the party once known as the Bolsheviki, but now called Communist. Not only does the dominant party rule in all of the instances mentioned, but no other parties can legally exist, there may, it has been remarked, be other parties in the Soviet Union, but "on the sole condition that one is in power and the others in jail"[1]

ANOTHER ONE-PARTY RÉGIME

To be sure, on paper, government and party are, in the U.S.S.R. (and the same is broadly, though not completely, true in Germany) two distinct and complementary mechanisms. From Moscow down through the constituent republics, the provinces and districts, and out into the remotest villages, the two run parallel, each with its own headquarters, congresses, councils, officers, treasuries, newspapers, and what not; and officially it is the government, not the party, that makes laws, issues decrees, conducts foreign relations, carries on administration, controls the army and navy, and gives orders to the police. Actually, however, it is the party that rules. Higher officials in the government are picked by party bureaus, and Joseph Stalin transcends them all, not so much because of formal government connections that he has as rather from the vantage point of the party positions that he occupies. Measures devised and policies determined by the Political Bureau (*Politbureau*) of the party (which Stalin selects and dominates) become quickly and unfailingly those of the

[1] A. R. Williams, *The Soviets* (New York, 1937), 56. Russia was, indeed, the first of the one-party states. "Lenin and his followers . . . released into the world in the one-party state an idea that has come to be the *Leitmotif* of an un-Tolstoyan era of totalitarian war and equally totalitarian peace." J. A. Hawgood, *Modern Constitutions Since 1787* (New York, 1939), 395.

government. Whether it be a five-year plan, a decision to join the League of Nations, a policy affecting labor or the press, the party decides, the government merely receives the decision and carries it out. "The party openly admits," says Stalin, "that it guides and gives general direction to the government." In point of fact, the party *is* the government in all except form, and the Communist dictatorship is the dictatorship of the Communist *party*—a party which has on its rolls not over 2,000,000 members out of a total national population of 170,000,000, and which, notwithstanding formal arrangements that would give a contrary impression, is organized and run on lines affording little scope for democracy. Any study of government in the U.S.S.R. today must, therefore, start with an inquiry into what the Communist party is and how it works.

COMMUNIST DOCTRINE

Like most organizations of the kind, the party is both a creed and a mechanism. It is a creed in the sense that it cherishes an elaborate body of economic and political doctrine to which all of its members must unswervingly adhere. It is a mechanism in the sense that it is geared in all of its parts to highly centralized control by a single compact group driving steadily toward an ultimate goal. The party's principles are derived more largely from the teachings of Karl Marx than from any other single source. Like Marx, the party sharply indicts the whole structure and theory of modern capitalistic society. As long as there are men who live mainly by labor and others who live mainly by investment and directing the labor of others, hostility between the two groups is inevitable and class war must continue to be the mode or means of all social evolution. In all of its typical contemporary forms, the state is an organization for upholding the institution of private property, an instrumentality for perpetuating the domination of the owners of wealth over the propertyless, an agency for preserving the economic and social status quo. Democracy, as operating in countries like Great Britain and France, is not popular rule, but bourgeois rule. Social justice therefore requires that the state and the instrumentalities of government as known to the capitalistic world be overthrown; and while Marx had the idea that this could come about only after capitalism had wrought its own destruction in a highly industrialized society, Lenin and his followers boldly planned—in an agricultural country which according to the Marxian hypothesis was least prepared of all for a socialist revolution—to take a short cut and proceed to the revolution forthwith. The final overthrow of capitalism and of bourgeois government must come by deliberate action of the work-

ers themselves, by violent means, and through capturing control of the state.

It is part of the theory that, under proletarian dominance, the state will diminish in importance, gradually withering away as the workers for the first time gain true freedom in a non-capitalistic, classless, cooperative society. But for the time being the proletariat, having seized the state by violence and turned its weapons against those whom it formerly served, must reconstruct and run it as a means of finally crushing all forces that still would block the permanent realization of a collectivist society based on proletarian dictatorship. Once in power, Communism must address itself to doing away with private property, implementing rule by the workers, and thereby introducing the only possible antecedent conditions for democracy of a genuine sort. Formerly, the idea was held, too, that Communism must throw its energies, through propaganda and agitation, into promoting world revolution, since it seemed hardly probable that a communist state could sustain itself indefinitely in a world remaining predominantly capitalist. Under the leadership of Stalin, the program of world revolution has, in the last decade, been largely shelved and emphasis placed on maturing the new régime within the U.S.S.R. and winning a place of influence and respect in the family of nations.[1] The ultimate objective still is, however, an international community of proletarian states, leading in time to a single state controlled by the workers of all lands, with racial and national boundaries forever obliterated. The road to be travelled, even in Russia alone, is, as Lenin conceded, long and difficult. But while tactics may be, and have been, changed to meet differing conditions, the direction of march must never be shifted. Composed of "the most active and politically conscious citizens," the Communist party becomes, in the language of the U.S.S.R. constitution, "the vanguard of the working people in their struggle to strengthen and develop the socialist order." [2]

THE "PARTY LINE"

On the road toward realization of the broad objectives indicated, the party needs at every

[1] Moscow's moves in 1939 suggested revival of the world program.

[2] For discussions of the theory of communism, see V. I Lenin, *The State and Revolution* (Detroit, 1917), J Stalin, *Leninism*, trans by E and C Paul (New York, 1928), H. J Laski, *Communism* (New York, 1927), R. W. Postgate, *The Bolshevik Theory* (New York, 1920), E Colton, *The X Y Z of Communism* (New York, 1931), and T B Brameld, *A Philosophic Approach to Communism* (Chicago, 1933). Cf brief expositions in F. W. Coker, *Recent Political Thought*, Chap vi, and G. D. H. and M Cole, *The Intelligent Man's Review of Europe Today*, 459-479. The relations of Russian communism to the thought of Marx are dealt with in M. Hillquit, *From Marx to Lenin* (New York, 1921).

stage a more immediate formulation of policies and methods; and thus arises what the Communists refer to as the "general line" of the party, or, more popularly, the "party line." At any given time, the party line is, of course, binding upon all party members; and party "directives," *i.e.*, orders, on whatsoever subjects, must proceed from it. Over a period of years, however, the "line" possesses flexibility; in the light of altered circumstances, the competent authorities may give it new twists and slants. The earliest formal expression of it is found in the party program adopted at the eighth party congress in March, 1919—a comprehensive document presenting the official Communist interpretation of the recent revolution and setting forth the policies of the new régime with respect to national groups, military affairs, justice, education, religion, agriculture, money and banking, labor, housing, public health, and other matters.[1] In 20 years, no change whatsoever has been made in this ample statement of party policy except only one involving the official party name.[2] But successive party congresses have amplified it and given it more specific application to developing situations, and even between congresses the party Central Committee has performed a similar function. A recent writer has suggested, indeed, that the promulgation of the new constitution for the U.S.S.R. late in 1936 may not unlikely be followed eventually by issuance of the 1919 party program in a somewhat revised form.[3] However that may be, one can still read the 30-page document of 20 years ago in full assurance that he is getting the essentials of Communist party policy of today.

PARTY MEMBERSHIP

Like the Italian Fascist and German National Socialist parties, the Communist party in the U.S.S.R. is a compact and integrated body, set off sharply from the general mass of the citizenry and purposely kept small enough to enable exacting standards to be maintained and rigid discipline enforced. When power was captured in 1917, the number of members (of the then Bolshevik wing of the Social Democratic party) did not exceed 200,000. Rising to 1,500,000 in the following decade, it has since fluctuated between that figure and some 3,000,000 (in 1933), being at the date of writing (1939) approximately 2,000,000, including not only full members but also "candidates," *i.e.*, adher-

[1] For this document, in English translation, see W. E. Rappard *et al*, *Source Book*, Pt. V, 7–33.

[2] The name "Communist party," adopted officially in February, 1918, was in 1923 changed to "All-Union Communist party."

[3] S. N. Harper, *The Government of the Soviet Union*, 64.

ents passing through a period of probation.[1] On two occasions—in 1924 and 1927—there have been mass admissions, running each time to a few hundred thousand. Otherwise, accessions have been gradual and as a rule individual. Large numbers of people not affiliated with the party call themselves Communists and may be reckoned as supporters of the régime; by lowering standards, the party could easily double or triple its membership. The general policy, however, has been to keep the requirements for admission so high that relatively few people will undertake to meet them, during some intervals, indeed, the doors have been closed completely.

CONDITIONS OF ADMISSION

Possessed of sufficient zeal and fortitude to desire to become a member, one secures recommendations from three or more members in good standing and applies to a local party branch, which institutes a searching inquiry into his qualifications. If accepted, he becomes—and remains from one to five years—a "candidate," or probationer, finally passing from this status to full membership only if, upon rigorous examination, he is found to be actuated by no selfish or ulterior motives, grounded in and wedded to the Communist faith, devoid of any traces of "bourgeois mentality," informed on his civic obligations and duties—and not addicted to drink or religion! Not everyone, however, is eligible to apply for membership. Private merchants, speculators, priests, and *kulaks*[2] will under no circumstances be received. Others, too, will find the road to membership long or short, easy or difficult, according to their occupation and social status. Thus, applicants who for five years have been workers in factories and mines—regarded as likely to be of the most favorable mentality—need only two sponsors, of one year's standing in the party, and are kept on probation only a year. Collective farmers, farm laborers, small craftsmen, and primary school teachers, though usually of peasant antecedents, must furnish five sponsors who have been party members as long as five years, and must expect to be kept on probation two years. Sprung largely from the bourgeoisie, and therefore to be received with still greater caution, civil servants, members of the professions, intellectuals, and "white collar" folk generally, must have five sponsors of 10 years' standing and wait outside the gates for five years. The intention is that manual workers shall always preponderate, although at the

[1] A new category of "sympathizers," established in 1934, has not taken very definite shape and is not included in the figure given

[2] Farmers resisting the collectivization of their land.

present time only about 50 per cent are such—employees in industry and tillers of the soil. There is effort also to keep the proportion of women at about 20 per cent, as also to preserve a roughly proportionate distribution among the vast number of recognized nationalities within the Soviet Union.

PARTY "PURIFICATION

If it is difficult to get into the party, it is easy enough to get out of it. Any member may leave it of his own free will at any time; and even if he does not choose to resign, he need only grow lax about meeting his obligations or incur suspicion of disloyalty to have his red card taken away from him. From time to time, the world has heard of large-scale purges of the party—most recently a "purification" carried out in 1934–36 on such drastic lines that every party member who survived was obliged to have his card specially renewed.[1] But the party rolls are under the continuous scrutiny of a Commission of Party Control,[2] and from two to five per cent of the names on them are removed annually.[3] Grounds for expulsion are almost incredibly numerous, ranging from offenses directly against the party, such as publicly criticizing the party or its leaders, failing to pay party dues, promoting factional strife, or defying party authority,[4] to various forms of conduct tending to bring discredit upon the régime—abuse of office or authority, peculation, association with "alien elements" (*e.g.*, traders or priests), participation in religious ceremonies, or drunkenness. Lenin's oft-repeated admonition, "Reduce the membership and you strengthen the party," while sounding strange to American ears, is still accepted literally as a principle of action.

DUTIES AND OBLIGATIONS OF MEMBERS

Defining itself in its published rules as "a unified, militant organization held together by conscious, iron proletarian discipline," the party naturally

[1] It was largely this most relentless of all cleansings that reduced the party membership from the earlier 3,000,000 or more to the present 2,000,000.

[2] See pp. 887–888 below

[3] A. R. Williams, *op. cit*, 68.

[4] Even Trotsky and other leading actors in the revolutionary drama have found to their sorrow that there is no place in the party for factions having their own programs and objectives Trotsky's supreme offense lay in his insistence upon lines of policy (*e g.*, promoting world revolution rather than merely consolidating the régime in the Soviet Union) contrary to those favored by the directing authority of the party. In extremer cases like this, ejection from the party is likely to be accompanied by ejection from the world also[1]. But Trotsky contrived to escape and for several years has been living in exile. Other leaders, as also humbler members, having been expelled from the party, have sometimes given sufficient evidence of repentance to win restoration to the rolls. For Trotsky's interpretation of the party's policy, and his reasons for opposing it, see his book, *The Revolution Betrayed*, trans. by M. Eastman (Garden City, 1937). Cf. also his *My Life* (New York, 1930).

subjects its members to a rigorous system of controls. A member, to be sure, takes no mystic vows, wears no shirt of particular color or other uniform, displays no badge, employs no special salute, and uses no secret sign or password. But he is fully registered, both locally and at Moscow; and his membership card carries with it a list of obligations calculated to frighten off all save those of genuine conviction and zeal. Here are some of the things that he must do: (1) pay an initiation fee and afterwards support the party by monthly dues ranging from 20 copeks up to three per cent of his income (if it exceeds 500 rubles), and in addition dip into his usually meager resources for contributions to all sorts of charitable, memorial, and patriotic enterprises; (2) accept unhesitatingly the "party line" of policy and action, irrespective of whether developed in directions of which he personally disapproves; (3) observe strict party discipline, and carry out all party orders and instructions, recognizing that his time and talents are no longer his to do with as he will, but absolutely at the command of the party, regardless of dangers and hardships that may be entailed; (4) "take [so say the rules] an active part in the political life of the party and of the country"—in other words, not merely go along passively as a believer or well-wisher, but add to his labor in earning a living unremitting positive services to the party, *e.g.*, by helping arrange and conduct meetings, participating in drives and demonstrations, instructing recruits, sitting with committees, and what not; (5) "work untiringly to raise his ideological equipment, to master the principles of Marxism-Leninism, and the important political and organizational decisions of the party, and to explain these to the non-party masses" —in short, to consider that the instruction which he received as a probationer is only the beginning of his political education, to be continued endlessly in special classes, schools, "circles," reading courses, and even, on the higher levels, seminars; (6) "set an example in the observance of labor and state discipline, master the technique of his work, and continually raise his production and work qualifications", and (7) abstain from trade and other lucrative occupations, evincing no concern about profits, and turning whatever he can of his earnings to pension funds and similar public ends.[1] In a word, although renouncing any sort of association with religion, a member must subject himself to a régime of discipline, self-denial, and service reminiscent of nothing quite so much as that enforced by a mediaeval religious order. Of course there are compensations.

[1] Since 1933, the earlier restriction of maximum earnings to 900 rubles a month has not applied, but the spirit of the rule is still maintained

Party membership carries with it a certain distinction; one can always be sure of a job, with preferential treatment in such matters as promotion; various other forms of priority—even in such respects as admission to rest-homes and hospitals—can be claimed; in short, the party looks after its own. But duties and services come first; and if there is any dereliction or wavering, the member will not have long to wait before the disciplinary authorities take him in hand.

MAKING YOUNG COMMUNISTS

The founders of the Communist régime were well aware that the ultimate success of their ambitious experiment would not unlikely depend upon the extent to which they succeeded in indoctrinating with their views a younger generation which had known nothing of the struggles against tsardom. Upon boys and girls of even tender ages must be imposed a "proletarian morality," precisely as in Western countries the ruling elements impose a "bourgeois morality." Like the Italian Fascists, and later the German Nazis, the founders therefore made special provision for the political instruction of youth. The basic youth organization is an All-Union Communist League of Youth (abbreviated into *Comsomol*), organized on lines roughly similar to those of the party, embracing some 200,000 "cells," or branches, in factories, secondary schools, universities, etc., and on collective farms, and having a present membership of more than 5,000,000. Membership is open to young people of both sexes, between the ages of 15 and 30, and drawn from non-Communist as well as from Communist families; although in the case of youth of non-proletarian origin, an applicant must present recommendations from two party or *Comsomol* members of two years' standing and undergo a year's probation. Discipline is somewhat less rigorous than in the party. Nevertheless there are plenty of rules that must be obeyed, under penalty of expulsion. As would be surmised, the prime object of the organization is the training of youth in Communist doctrine and practice; and although it is not contemplated or desired that all *Comsomol* "graduates" shall pass into the party ranks, the day is anticipated when the party will be composed exclusively, or nearly so, of people who have come up through the ancillary organization. Although adjured above all else to "study, study, study," *Comsomol* members have for 20 years served the Communist cause in many practical ways—bearing the brunt of great construction enterprises, coaching illiterate voters in the use of the ballot, training aviators, helping round up and discipline homeless and incorrigible children running wild in the streets of the

great cities, and providing leadership for organizations of younger elements generally in the population. For the *Comsomol* is only the inner circle of a scheme of youth organization planned eventually to embrace the whole of the 50,000,000 or more children and youth in the Soviet Union. Next beyond it is the circle represented by the Pioneers, embracing over 6,000,000 children between the ages of 10 and 16; and beyond this, the organization of Little Octobrists,[1] formed of children of from 8 to 10. Admission to these junior organizations is without reference to origin or class; and emphasis is placed, largely under *Comsomol* tutelage, on indoctrination with communist principles, formation of habits of "socially useful labor," and elementary military training. In a decree of 1937, the Moscow government indeed indicated its intention to bring all children into pre-military service; and the formation of juvenile regiments, patterned on the units of the Red Army, is going steadily forward.[2]

PARTY ORGANIZATION:

1. THE LOWER HIERARCHY

The cardinal principle in accordance with which the party is organized is described officially as "democratic centralism"; and the party rules explain this as involving four main points (1) election of party officials and organs, high and low; (2) full responsibility of such officials and organs to the appropriate party organizations, (3) strict party discipline and complete subordination of minorities to majorities; and (4) unquestioning acquiescence of lower organs, and of all party members, in decisions reached in the higher levels.[3] The basic unit in the hierarchy of party organs is a group of at least three (though of course usually more) members in good standing, organized in a factory, mine, army regiment, store, office, university, village, or on a collective farm—sometimes, indeed, one in each department or branch of a large establishment—and charged with upholding the party's interests and propagating its ideas and policies within the range of its contacts. Known formerly as "cells," these local units, now officially termed "primary party organs," number some 135,000; and the larger ones have secretaries and committees. From this point

[1] According to the old-style Russian calendar, the Bolshevik revolution occurred in October, 1917, not November.

[2] S. N. Harper, *Civic Training in Soviet Russia* (Chicago, 1929), and *Making Bolsheviks* (Chicago, 1931), T. Woody, *New Minds New Men?* (New York, 1932), S. Nearing, *Education in Soviet Russia* (New York, 1926), A. P. Pinkevitch, *The New Education in the Soviet Republic* (New York, 1929). For the text of a new program for the *Comsomol* adopted in 1936, see W. E. Rappard *et al.*, *Source Book*, Pt. V, 53–59.

[3] W. E. Rappard *et al.*, *Source Book*, Pt. V, 40.

upward, the committees and congresses are in all cases elective, and therefore in theory representative. The primary organs choose delegates who constitute the party committees of towns and rural districts; these, in turn, elect the party committees of provinces or regions; from these are sent representatives who form the party congress in each of the federated republics of the Union; and from these congresses go the delegates who make up the occasionally convened All-Union Congress. The thread of responsibility and control is unbroken from top to bottom; each organ, elected by those immediately beneath it, has full power over its inferiors, annulling or modifying any of their actions deemed out of harmony with the "party line."

2. THE ALL-UNION CONGRESS

The organs operating on the All-Union level call for some special comment; it is they that make the big decisions for the party and carry them into effect, however much or little one may credit the theory that they merely translate into action the will of the party rank and file as borne to the top along the converging lines starting in the local, primary units. At the apex of the pyramid of elective bodies stands the All-Union Congress, required by present party rules to meet at least once every three years, and having met, as a matter of fact, 17 times since the antecedent Social Democratic party was formed in 1898. In theory, the Congress is the supreme authority in the party, and the party rules assign to it such fundamental powers as those of hearing and approving the reports of other All-Union party organs, revising and amending the party program and rules, and determining "the tactical line of the party on the principal questions of current policy." As a body of more than 2,000 delegates and alternates, it, however, is far too large and promiscuous for effective deliberation, and the actual weighing of policies and making of decisions is performed rather by other agencies, even though likely to be cast in the form of Congress resolutions and thereby given the validity which, however much difference of opinion there may have been about them when under debate, makes them thenceforth absolutely binding upon every party organ and member.

3. THE CENTRAL COMMITTEE AND ITS AUXILIARIES

Three high party authorities, on an All-Union basis, the Congress itself designates. The first, and most important, is the Central Committee—a body of 70 members (and 68 alternates), which, as the party rules bluntly say, during the intervals between congresses "guides the entire work of the party." Congresses are infrequent (increasingly so of late); as pointed out, they can do but

little except ratify what is placed before them; the prestige of the Central Committee is such that its activities and proposals are almost invariably approved; and, more truly than the Congress, the Committee is the supreme party authority. However, even the Central Committee does not, as a whole, function continuously, the rules do not require a full meeting of it oftener than once every four months. Looking still farther for the ultimate seat of power, one finds it most truly in a Political Bureau (*Politbureau*), of 10 members which the Central Committee appoints as custodian of supreme authority when the Committee is not sitting. Here, too, is where the outstanding personality in the régime today, Joseph Stalin, is encountered; for not only is he himself a dominating member of the Political Bureau, but he personally picks the men whom the Central Committee, nominally by secret ballot, appoints to the body.[1] Alongside the Political Bureau, too, is an Organization Bureau (*Orgbureau*) of 10 members, also named by the Central Committee, with Stalin again a controlling member, and charged with supervision of the party hierarchy and in particular with matters relating to propaganda and recruiting. And still a third agency which the Committee designates is a Secretariat of four members, with Stalin, since 1922, at the head as secretary-general of the party. In this interlocking directorate—most of all, in the Political Bureau, which in practice first debates in secret, and decides, issues coming before the Central Committee—supreme party control is lodged, and chiefly in Stalin, who, without holding any outstanding government post at all, draws from the party connections mentioned powers which make him to all intents and purposes dictator of the Soviet Union.[2]

4. THE COMMISSION OF PARTY CONTROL AS AN ORGAN OF PARTY DISCIPLINE

Under reorganization measures adopted at the seventeenth (and most recent) meeting of the party Congress, in 1934, the Congress elects not only the Central Committee, but also (1) an Auditing Committee, of 22 members, charged with checking up on the finances of all central party organs, and, more important, (2) a Commission of Party Control, of 61 members, sometimes described as the "collective keeper of the party conscience."[3] In the last-mentioned agency, we encounter the disciplinary arm of the party—the authority which keeps the party

[1] Lenin was chairman of the Political Bureau until his death in 1924.

[2] Most members of the Political Bureau hold positions of one sort or another in the government, but it is in the Bureau, not by the government, that decisions have been reached on matters as fundamental as the adoption of a five-year plan and the "liquidation" of the *kulaks*.

[3] A. R. Williams, *op. cit.*, 60.

membership lists, inspects (through observers) the meetings of committees and other organs to see that the "party line" is not departed from, calls before it for questioning party members suspected or accused of disloyalty, serves as final court of appeal in cases of expulsion, and directs the carrying out of all general purgings and cleansings. Since 1934, too, the Commission of Party Control has been associated, in supervision over all institutions and activities of the state, with a Commission of Soviet Control; and this relationship, combined with the fact that the Commission of Soviet Control, although an organ of government, is nominated by the party Congress, illustrates how the government is subordinated to the party—even though this point is the only one at which, officially, government and party are connected.

THE THIRD INTERNATIONAL, OR "COMINTERN"

Hardly a country in the world is without a Communist party, and, in line with communism's emphasis on world unity and action, about 65 Communist parties, in as many different states and colonies, have been linked up in a federation known as the Third (Communist) International, or *Comintern*, dating from 1919.[1] The constitution of this organization vests supreme authority in a World Congress of some 500 members, whose sixth and most recent meeting was held in 1935, with powers exercised between sessions by an executive committee of 46 members; and the avowed object of the organization, as set forth in the constitution, is to work by all possible means, including violence, "for the overthrow of the international bourgeoisie and the establishment of a Soviet republic, as a transitional stage toward complete annihilation of the state." Included, naturally, among the dues-paying constituent bodies is the Communist party of the U.S.S.R.; and although entitled, on a pro-rata basis, to only a minority of votes in the World Congress, this U.S.S.R. section is decidedly the most important, with the headquarters of the entire organization maintained in Moscow. All decisions of the World Congress are binding upon the U.S.S.R. section as upon every other one, and of course upon all of its members individually.

Between the All-Union Communist party and the *Comintern*, there is obviously the closest sort of organic connection. To be sure, there has not been a great deal of interlocking of personnel, although

[1] The First International, founded in London in 1864, came to an end in 1876, the Second, dating from 1889, still exists, with headquarters in Brussels, and is a loose federation of national parties of *socialist*, rather than *communist*, persuasion, including the British Labor party and the Socialist parties of France and the United States.

Stalin has long been a member of the *Comintern's* executive committee. But the party is, as pointed out, a section or unit of the International. What about connections between the *Comintern* and the Soviet government? Is the government merely a *Comintern* tool? On this point, there has been sharp interchange of charges and denials. The government has been criticized for permitting the *Comintern* to operate from a Russian base; it has been accused of subsidizing the organization; it has been represented as interlocked with it in personnel, and it has been alleged to be devoted to the same world program of revolution that the *Comintern* avows and boasts. From Moscow come rejoinders (1) that democratic states which allow Communist parties to operate within their borders have no ground for criticizing the U.S.S.R. for tolerating a joint headquarters of such parties, (2) that while the Soviet Communist party pays its dues to the *Comintern* as do the others, absolutely no financial support is extended by the government; (3) that it is just as proper for Stalin to hold office in the Third International as it was for Ramsay MacDonald to be a high official of the Second; (4) that inquiry into the facts would reveal that on plenty of occasions the policies of the government have been directly contrary to those of the *Comintern*, as, for example, when the U.S.S.R. became the first state in the world to ratify the Briand-Kellogg Pact, notwithstanding the *Comintern's* furious denunciation of the instrument, (5) that, as revealed by discussions and decisions in the 1935 World Congress, the *Comintern* is itself growing more moderate and conciliatory, and (6) that, in any event, "the Soviet government is one thing, the *Comintern* quite another."

THE "COMINTERN" AND THE GOVERNMENT

Soviet defenses as outlined, *being defenses*, must be taken with the proverbial grains of salt. The leading position held by the All-Union Communist party in the counsels of the *Comintern*, combined with the party's absolute dominance of the government, sets up an inescapable presumption of rather close, even if somewhat indirect, connection between government and International, if the decisions of the *Comintern* are binding upon the party, and the party runs the government, there must, in the nature of the case, be some reflection of *Comintern* influence on government policy. Differing often on the means by which, and the speed with which, things are to be done, the two still have much in common in their objectives So that, even if, for practical reasons, the government nowadays maintains better working relations with the capitalistic world than *Comintern* approves, the force ultimately motivating it

must still be regarded as springing from concepts and purposes animating the ultra-revolutionary organization itself.[1]

[1] On the Third International, see L. L. Lorwin, "Communist Parties," in *Encyc of the Social Sciences*, IV, 87–95, and W. H. Chamberlin, *Soviet Russia*, Chap vi One may consult also W. R Batsell, *Soviet Rule in Russia*, containing abundant documents. Earlier documents will be found, too, in "The Communist Party and Its Relations to the Third International and to the Russian Soviets," *Internat. Conciliation*, Nos. 158–159 (Jan., Feb., 1921).

General references on the All-Union Communist party include S and B Webb, *Soviet Communism: A New Civilization?*, 2 vols. (rev. ed., New York, 1937), H. Popov, *Outline History of the Communist Party of the Soviet Union*, 2 vols (New York, 1934); A. R. Williams, *The Soviets*, cited above, V. M Dean, "The Political Structure of the Soviet State: The Communist Party," *Foreign Policy Reports*, VIII, No. 1 (Mar. 16, 1932), R L. Buell (ed.), *New Governments in Europe* (rev. ed.), 352–363, and Lord Passfield (S Webb), "Soviet Communism Its Present Position and Prospects," *Internat. Affairs*, May–June, 1936 Cf. p. 879, note 2, above. H. Barbusse, *Stalin* (New York, 1935), is too laudatory, but nevertheless useful.

CHAPTER XLV

Government in the U.S.S.R.

AS POINTED out in a previous chapter, the political disturbances of 1905–06 impelled the tsarist government of Russia to issue manifestoes giving the country what was in effect a written constitution.[1] The Bolsheviki, and later Communists, have, in their turn, been constitution-makers also; three extensive fundamental laws of their devising—dating from 1918, 1924, and 1936—have marked significant stages in the evolution of the present Soviet régime.

A SERIES OF SOVIET CONSTITUTIONS

1. 1918 THE RUSSIAN SOCIALIST FEDERATED SOVIET REPUBLIC

With the more moderate Mensheviki excluded from all share in directing the course of the revolution, the Bolshevik leaders, in the spring of 1918, turned their attention to the rather bourgeois business of framing a constitution—as yet, of course, only for what was conceived of as an essentially Russian republic. A commission set up by the Central Executive Committee of the party, with Bukharin and Stalin among its prominent members, worked out a draft; the Fifth All-Russian Congress of Soviets, meeting at Moscow,[2] gave its approval, and in July the document was promulgated as the fundamental law of the Russian Socialist Federated Soviet Republic.[3] Based on an extensive series of declarations, rules, and decrees issued by the revolutionary authorities between the *coup* of November, 1917, and the early summer of 1918—although also introducing some new elements—the instrument presented many challenging features. Principles of civil equality and personal freedom as enunciated in Western constitutions yielded to sharp class distinctions and proletarian dictatorship, no right or privilege survived that was capable of being used to the detriment of the revolution. Private ownership of land was declared abolished, the Orthodox Church disestablished, education secularized, and every phase of economic life placed under the iron hand

[1] See pp. 865–867 above.

[2] The capital was moved thither from Petrograd in February, and the Fourth All-Russian Congress was held there in March.

[3] For the text, see H. L. McBain and L. Rogers, *New Constitutions of Europe*, 385–400, W. R. Batsell, *Soviet Rule in Russia* (New York, 1929), 80–95.

of the state. And machinery was erected for a socialist, soviet republic, composed of "autonomous" units created along ethnographic and national lines, and associated together in a federal scheme, which, however, did not fail to assign to the authorities at Moscow full control over "all questions of national importance." [1]

2. 1924: THE UNION OF SOVIET SOCIALIST REPUBLICS

Early Bolshevik policy toward non-Russian peoples who had lived under the rule of the tsar was almost ostentatiously generous. As Bukharin put it in 1918: "The Russian workman, who has the power, says to workmen of other peoples living in Russia: 'Comrades, if you do not care to become members of our Soviet Republic, if you desire to form your own Soviet Republic, do so. We give you the full right to do so. We do not wish to hold you by force a single minute.' " [2] Such a policy was dictated partly by the preoccupation of the new régime with consolidating its position in the more immediate neighborhood of its base, partly by the thought that such encouragement of self-determination might prompt revolutionary disturbances in other countries; and while, as time went on, centralized control was considerably tightened up in the areas directly under Moscow's domination, *i.e.*, in the *Russian* Federation of Republics of the 1918 constitution, the federal principle was progressively extended to portions of the old empire not originally reached. In White Russia, the Ukraine, Transcaucasia, Khorezem, Bukhara, and Eastern Siberia sprang up new states, endowed with constitutions and independent governments, modelled in most instances on the new Russian pattern, and therefore soviet in structure and more or less Communist in principles; and as the menace of counter-revolution and foreign intervention diminished, the Moscow dictatorship began considering the desirability of strengthening its position and widening its power through formal political union with such states, the destinies of which were, through party connections, already to some extent under its guidance. A treaty of union linked up Russia proper, the Ukraine, White Russia, and Transcaucasia in 1922; and two years later a new constitution was spread blanket-wise over seven republics in all, federated under the new and intriguing name of Union of Soviet Socialist Republics —intriguing because suggesting that an adhering state was not giving up its identity and joining *Russia*, but merely associating itself with

[1] The territories to which this first constitution applied comprised about three-quarters of the old tsarist empire. Conspicuously lacking were, of course, the areas that had broken away, such as Finland, Poland, Estonia, Latvia, and Lithuania.

[2] From a pamphlet entitled "Program of Communists," cited in *Internat. Conciliation*, Apr., 1920, pp. 172–173.

other autonomous states in what Litvinov once described at Geneva as a "League of Soviet Nations." [1] Later on (in 1925), a new constitution was promulgated for the Russian Socialist Federated Soviet Republic, *i.e.*, Russia proper, as one of the seven constituent republics.[2] But the 1924 instrument was the constitution of a *federation*, marking, indeed, the beginning of the Soviet Union as we know it today.

3. 1936. NEW CONSTITUTION OF THE U S S R.

For our purposes here, this first Union constitution can be passed over with bare mention, for the reason that in 1936 it was superseded by another one, based extensively upon it, yet presenting also numerous novel aspects. By the end of 1934, the first "five-year plan" (1928–32) of economic and social reconstruction had been carried out with considerable success and a second "plan," of similar duration, auspiciously launched. Agriculture had been widely collectivized, socialized industry had been developed at a rapid pace, government had been stabilized, domestic peace and order had been achieved, friends had been made abroad and an important place won in the councils of the nations. And it was with a view to bringing the machinery and processes of government into closer accord with the new conditions—including introduction of universal and equal suffrage, with direct election of all soviets by secret ballot—that Stalin influenced the Central Executive Committee of the party to approve a program of constitutional changes which the Seventh All-Union Congress of Soviets endorsed in principle during its session of February, 1935. Aiming not so much at a new constitution that should be a blueprint for the Communist state of the future as at one that should record and consolidate the practical results already achieved, a newly elected All-Union Central Executive Committee appointed a constitutional commission of 31 members, with Stalin as chairman; and after more than a year of work, in strict secrecy, this agency, in June, 1936, laid the results of its labors before the presidium of the Central Executive Committee, which voted to call a special meeting of the All-Union Congress to consider the draft, and in the meantime to publish the document for discussion by the people. Sixty million copies, in all, are said

[1] Ratified by the Second Congress of the Soviets of the Union early in 1925, the new instrument was actually in force from January 13, 1924, on the basis of a resolution of the Central Executive Committee elected earlier by the First Union Congress. For the text, see W E Rappard *et al*, *Source Book*, Pt V, 88–106, and on the antecedents of the formation of the Union, A. L P Dennis, "Soviet Russia and Federated Russia," *Polit Sci Quar*, Dec, 1923. The U. S S R. carefully avoids the term "Russia" in its constitutions and other public documents

[2] Text in W E Rappard *et al*, *Source Book*, Pt V, 67–87.

to have been distributed, besides publication in 10,000 newspapers; and 527,000 meetings of soviets and other groups are reported to have taken part in the great debate.[1] Suggested amendments poured in from all directions—154,000 of them—some accompanied by, or even cast in the form of, lyrics! District congresses of soviets made their contributions; and eventually, in November, 1936, the Eighth All-Union Congress, bringing together 2,016 representatives of 63 nationalities,[2] met at the capital, voted 43 changes in the original draft, and gave the document the final stamp of approval.[3]

Arranged in 13 chapters and 146 articles, the new fundamental law is a lengthy and challenging document. Chapter I, "Social Organization," sets forth the foundations of the "socialist state of workers and peasants," attributing all power to "the working people of town and country as represented by soviets of working people's deputies." Chapter II outlines the system of federalism as revised on the basis of constituent republics now increased in number to 11. Chapter III has to do with "supreme organs of state power" in the Union, Chapter IV with supreme organs in the individual republics, and Chapters V and VI with the organs of "state administration" in Union and constituent republics, respectively. Chapters VIII and IX treat of local government and the judiciary. Chapter X indicates impressively the "basic rights and duties of citizens," on lines—at all events so far as paper provisions go—reminding one of the famous corresponding section of the Weimar constitution in Germany.[4] Chapter XI introduces the new scheme of popular nominations and elections. And Chapter XIII entrusts sole power to amend the new instrument to the Supreme Soviet of the U.S.S.R. (superseding the All-Union Congress), requiring an affirmative two-thirds vote in each of the two chambers, instead of a simple majority in one body as before.[5]

[1] A. L. Strong, *The New Soviet Constitution* (New York, 1937), 47

[2] Seventy-two per cent of the delegates were members of the Communist party, 28 per cent non-members. Forty-two per cent were industrial workers, 40 per cent peasants, 18 per cent intellectuals. Nearly one-fifth were women

[3] For a somewhat rhapsodical account of the making and adoption of the constitution, see A. L. Strong, *op. cit.*, Chap iii.

[4] See pp. 646–649 above.

[5] The full text of the constitution, in English translation, will be found in W. E. Rappard *et al*, *Source Book*, Pt. V, 108–129, *Internat. Conciliation*, No 327 (Feb., 1937), and A. L. Strong, *op. cit.*, 121–160 (with summary of changes from earlier Soviet constitutions, 163–169). For good analyses of the instrument, see V. M. Dean, "The New Constitution of the U. S. S. R.," *Foreign Policy Reports*, XIII, No 3 (Apr. 15, 1937), and A. Brecht, "The New Russian Constitution," *Social Research*, May, 1937. Of much interest, naturally, is *The New Democracy—Stalin's Speech on the New Constitution* (London, 1022).

WHAT IS THE SOVIET UNION?

Elsewhere we have termed the dominion of the tsars a "polyglot Eurasian empire." The U.S.S.R. is no less polyglot or Eurasian; indeed, except for territories on the western border lost as a result of the World War, the Soviet Union of today is practically coterminous with the old Empire. This means that its population of some 170,000,000 embraces a bewildering number of more or less distinct nationalities, as noted above, no fewer than 63 such were represented in the Congress that adopted the present constitution; indeed, the census of 1926 distinguished 185, speaking 147 different languages[1] Three-fourths of the people included are Slavs—White Russians, Ukrainians or Little Russians, and Great Russians. But there are Finns, Jews, Usbeks, Turcomans, Tartars, Circassians, Greeks, Armenians, Georgians, along with dozens of lesser groups such as Poles, Germans, Lithuanians, Rumanians, Kirghisians, Kalmuks, Buriats, Yakuts, and Bashkirs, [1] and altogether the picture is one of amazing diversity in physical characteristics, in language and religion, in stages of cultural advancement. From the outset, the Bolshevist régime stressed the twin principles of self-determination and federalism; [2] the 1918 constitution of the R.S.F.S.R. set up federal arrangements within the relatively restricted area to which that basic law applied; and the "Union" constitutions of 1924 and 1936 extended the principle to the far-flung areas over which Soviet control had by those dates been established. Under the 1936 instrument, 11 basic republics are federated in the Union, with the R.S.F.S.R. much the largest and most important, but all possessed of their own constitutions, legislative and executive organs, courts, and budgets, and, nominally at least, subject to the authority of Moscow only in so far as the Union constitution prescribes.[3] The boundaries of a republic may not be changed without its consent; and although any attempt to exercise the right would no doubt meet with resistance, full freedom to secede is expressly conferred. Location on the Union's borders, facilitating secession, is, indeed, as stated by Stalin,

[1] Many of these population elements are only parts of nationalities of which the larger portions live beyond the borders of the Soviet Union On the general subject, see H Kohn, *Nationalism in the Soviet Union* (London, 1933), and R Broda, "The Revival of Nationalities in the Soviet Union," *Amer. Jour. of Sociol*, July, 1931.

[2] See the Declaration of Rights of the Peoples of Russia, Nov. 2, 1917, printed in W. E. Rappard *et al*, *Source Book*, Pt. V, 60–62

[3] Other republics include Ukraine and White Russia in Europe, Georgia, Armenia, Azerbaijan, Kazakhstan, and Uzbekistan in Asia The increase from four to 11 arose, not from territorial expansion, but from changes of status among the various parts of the Soviet Union.

one of the prerequisites of a basic, or "constituent" republic—along with compactness and habitation by a self-conscious national group of at least a million people. Recognition of racial, linguistic, and other diversities, even within a constituent republic, is further afforded by the setting off of "autonomous republics" (some two score in all) as enclaves within the larger areas; and not only these, but also a lower order of "autonomous regions," and indeed a still lower one of "national districts," with the way open for advancement from one grade to another until that of "constituent republic" is arrived at.

DISTRIBUTION OF POWERS

From their right to have their own constitutions and governments, their right of secession, and other guarantees extended them, it might be supposed that the constituent republics enjoy a truly autonomous position in a rather decentralized, and even weak, union. A little inquiry reveals, however, that this is not the case. To begin with, the republics retain only such powers as the constitution does not bestow upon the Union; and the constitutional distribution can be changed to any extent whatsoever by the Supreme Council of the Union, with or without the assent of the republics as such. Furthermore, the powers conferred upon the central government (in Article 14) are so numerous and vital that relatively few matters remain for regulation by the republics. Foreign affairs, war and peace, army and navy, foreign trade, transportation, posts and telegraphs, currency, banking, credit, insurance, justice, citizenship, amnesties—all are under exclusive jurisdiction of the Union government, which also is empowered to establish "fundamental principles" for land use, exploitation of natural resources, labor, education, and public health, and in general to prescribe and carry out "national economic plans." In the event, too, of a law of a republic (on any subject) differing from a Union law, the latter must invariably prevail. Adding together, therefore, the comprehensive framework of social and economic organization set up by the Union constitution, the exclusive jurisdictions granted by that instrument to the Union government, the broad powers of "normative" regulation bestowed, the rights conferred of suspending or rescinding the acts of soviets and executives of the republics, and the unifying administrative powers of the "Union-republic" commissariats,[1] and taking also into account the weighty central control exercised through the channels of the Communist party, one comes off inescapably with the conclusion that, in spite of the forms of federalism, centralization of

[1] See p. 906 below.

authority in the U.S.S.R. is possibly equalled, but hardly exceeded, anywhere else in the world. In point of fact, the system is not federal, in any ultimate sense, at all.

THE GOVERNMENT OF A CONSTITUENT REPUBLIC TO BE STUDIED FIRST

To visualize the complete scheme of government operating today in the U.S.S.R. is not easy; the system may not be truly federal, but the hierarchy of republics and other units renders it complicated. For present purposes, it may be clarified most effectively by taking up first the arrangements prevailing in a typical constituent republic—using as an example the Russian Socialist Federated Soviet Republic, as being the most important and the area most nearly corresponding to the European Russia of history—and afterwards describing the institutions of the U.S.S.R. as superimposed upon those of the republics. Fortunately, republic and Union governments are rooted in the same local and regional organizations, making possible the avoidance of a good deal of wearisome repetition.[1]

GOVERNMENT IN THE R.S.F.S.R.:

1. THE SYSTEM OF SOVIETS

Basic in the system, from bottom to top, is the device known as the soviet, or council; the entire structure of government, in republics and Union alike, consists essentially of a hierarchy of soviets,[2] pyramided on city and village units in the local communities. As already pointed out, the soviet, as a political instrument, made its earliest appearance, in the form of what were virtually strike-committees, in connection with the attempt to organize a general strike during the disturbances of 1905. Reappearing during the February–March revolution of 1917, committees or councils of the kind spread from larger cities to provincial towns and villages and to the army; and in the ensuing November revolution they so clearly proved their worth that during the early months of Bolshevik domination the leaders devised a standard structure for them, which was incorporated in the constitution of 1918. Composed of elected delegates of workingmen in shops, factories, and mines, and similarly of delegates of village peasantry and of soldiers in regiments of the Red Army—primarily functional, therefore, in their make-up rather than geographical—they came to be looked upon by communists generally as the natural primary units or elements of the future communist society, and

[1] Indeed, government in the republics is so largely regulated by the Union constitution that, as will appear, it cannot be described without frequent reference to that instrument

[2] Together, of course, with the executive and administrative officials chosen by the soviets and nominally responsible to them.

meanwhile as the indispensable instrumentalities of proletarian organization and control during the transition from capitalism to a new order.[1] And as the outlines of national-local organization were progressively filled in, city and village soviets became the units from which soviets in areas on the next higher level were chosen, and so on up through the still higher levels until an apex was reached in the soviet of the republic, and eventually of the U.S.S.R. itself. In every area, from smallest to largest, the soviet is the fundamental organ of government, functioning either directly or through agencies which it creates and controls. As a result, governments on all levels are, in structure at least, very much alike.

2. PRESENT GOVERNMENTAL AREAS

When the Bolsheviks assumed the reins, they envisaged a general reconstruction of the old local-government system of the Empire, with its provinces, regions, districts, cantons, and other areas. The task, however, was formidable, and while plans for a new system of administrative-economic units were early prepared, they were put into effect only slowly, unevenly in the various territories, and with numerous changes of scheme as the work progressed. Old and new arrangements often existed and functioned, more or less confusedly, side by side, and even today there is not complete uniformity. Since 1930, however, the plan generally in operation has been the relatively simple one of (1) towns and villages as primary units, (2) *raions*, or districts, combined into (3) *oblasts*, or provinces, and these, in turn, into (4) constituent republics—with, however, *oblasts* omitted in republics not formerly having them.

3. THE ELECTION OF SOVIETS

In every area, as has been said, the basic organ of government is the soviet, formerly elected directly in only the towns and villages, and indirectly in other areas, but under the constitution of 1936 chosen directly on all levels. Prior to the date mentioned, the voters in villages (*i.e.*, in rural areas) elected to the local soviet one delegate for every 100 people and those in towns one for every 1,000; village and town soviets then elected delegates to the district soviets, these bodies chose representatives in the provincial soviet or congress, and the provincial congress, in turn, sent representatives to the All-Republic and All-Union Congresses—though the symmetry of the scheme was interfered with somewhat by the right which town (but not village) soviets enjoyed to send additional delegates directly

[1] "The only form of proletarian dictatorship," declared the Second Congress of the Third International, "is a republic of soviets."

to the provincial congresses and those above.[1] When challenged on the point, Communist leaders explained that the indirect system was necessary so long as the mass of the voters could not be expected to have much familiarity with names and policies on a national scale, but added that eventually all elections would become direct, and, as indicated, the new fundamental law of 1936 introduced the promised change. The voters of towns and villages are therefore called together, at varying intervals, not only to choose the members of their local soviets, but also to participate in selecting delegates to soviets or councils on higher levels, although not officials of an executive or administrative character.

THE SUFFRAGE

The 1936 constitution starts off by declaring the U.S.S.R. "a socialist state of workers and peasants," and elsewhere it stipulates that the soviets shall be elected "by the working people in their respective territories."[2] From such provisions, the suffrage might readily be inferred to be restricted rigidly on occupational or functional lines. But such is not the case. In earlier days, to be sure, one could be a voter only if earning his livelihood "by productive work useful to society" or if engaged in domestic service which enabled other men or women to pursue such productive employment; and numerous categories of people were excluded altogether, not only from voting but from office-holding, *e.g.*, persons employing hired labor for profit, persons engaged in private business, merchants and their agents, monks and clergymen of all faiths, and members and employees of the old tsarist police. Even at that, the number of qualified electors at the time of the 1931 elections was no less than 84,000,000 (in the U.S.S.R. as a whole); some 60,000,000 actually voted on that occasion.[3] On the theory (no doubt rather optimistic) that all elements once requiring exclusion have been liquidated and the entire population welded into a single, homogeneous, proletarian body politic, the 1936 constitution confers the suffrage unreservedly[4] upon all citizens, male and female, at the age of 18, "irrespective of race and nationality, re-

[1] Village, *i.e.*, peasant, soviets were discriminated against as compared with urban ones not only in the fashion indicated, but also in that in the provincial congress they had only one spokesman for every 125,000 inhabitants as compared with one urban delegate for every 25,000 voters (equivalent to perhaps 60,000 population). The reason for favoring the urban workers was that they were generally more sympathetic toward the Communist régime than were the peasants

[2] Arts 1 and 95.

[3] See L. Teper, "Elections in Soviet Russia," *Amer. Polit. Sci Rev*, Oct, 1932

[4] Except for the mentally deficient and persons deprived of electoral rights by the courts.

ligion, educational qualifications, residence, social origin, property status, or past activity" [1]—an arrangement, on its face, going well beyond that to be found in any other country of the world. In even greater proportions than before, the voters are not members of the party, or even avowed Communists, and the same is true of the delegates elected to the various soviets, particularly in the lower levels.

ELECTORAL METHODS

Passing from the suffrage to other aspects of electoral procedure, the new fundamental law stipulates (1) that voting, instead of being open and oral as previously, shall be by secret ballot; (2) that every citizen shall have one vote, and only one, and (3) that, as has been explained, elections shall be direct all along the line, instead of only at the lowest level as before. The old arrangement under which village, or rural, communities were discriminated against in favor of urban communities is gone, and with it the general scheme under which voters once chose their representatives in the primary soviets on the basis of occupational groups—peasants, soldiers, miners, iron-workers, and what not. In other words (although primary units may, if they desire, retain some features of the old plan), vocational or functional representation has in the main given way to a wholly orthodox scheme of representation of voters lumped together in geographical constituencies.[2] Candidates for election to soviets on all levels are nominated by groups of voters in factories, plants, precincts, or other units, although some simply announce themselves. The list is usually scrutinized and sifted by a local Communist cell. But persons not so validated may win election; and the voters are sometimes admonished not to put too great a burden on the party members, but to elect trustworthy non-party men or women, at all events such as are of the "right" social origin. As a rule, elections

[1] Arts. 134–135.

[2] This is the more startling, considering the frankly class and functional basis of the earlier system Communist spokesmen aver that the old arrangements served a useful purpose in the stage in which they were employed, but that the approach to classless solidarity that has now been achieved renders them no longer necessary. Italian Fascism, as we have seen (pp. 845–849 above), places ever-increasing emphasis upon the functional principle, but of course its theory contemplates, as Soviet Communism does not, the perpetuation of classes and of distinct, and even conflicting, economic interests. Weighting of the electoral system in favor of the urban as distinguished from the rural populations may have been abandoned, not out of consideration for principles of democracy, but only because the enormous growth of urban populations in the past 15 years rendered the former discrimination no longer necessary.

In the R.S.F.S.R., the districts returning one member to the village soviet are supposed to contain 100 to 250 inhabitants, to the town soviet, 100 to 1,000 (3,000 in the cases of Moscow and Leningrad), to the district soviet, 500 to 1,500, to the provincial soviet, 15,000 to 40,000; and to the Supreme Soviet, or Council, 300,000.

stir considerable local interest, and in cities it is not unusual for as high as 90 per cent of the qualified voters to make their appearance at the polls. A majority of the electors in a district may at any time recall a representative serving in a soviet.

A SYSTEM LESS DEMOCRATIC THAN IT APPEARS

Reading simply the constitutional provisions, or even the description just given, one might fall into the error of crediting the new electoral system with being—as indeed is contended by people enamored of the régime [1]—one of the most democratic in the world. The error would lie in failure to remember (1) the total absence of anything approaching Western multi-partyism and (2) the all-pervading and unfailingly restrictive controls exercised by the Communist party through its officials, agents, and even ordinary members in every corner of the land. One may be sure that candidates for election to soviets, high and low, will rarely get far unless approved by the local party organization, and that they will not be so approved unless of the right social origin and mentality and unswervingly loyal to the régime; even if elected, they would not long be tolerated if disloyal. The forms of democracy are no doubt provided for more fully in the new electoral arrangements than in earlier ones; and for this due credit should be given. It is simply not in the cards, however, that under a rigid party dictatorship a vast non-party electorate should be allowed to exercise its political privileges without guidance and restraint. If there be democracy, it is strictly within the iron framework of the Communist monopoly of power.[2]

GENERAL ARRANGEMENTS FOR VILLAGE AND TOWN GOVERNMENT

The constitution of the U.S.S.R. requires a soviet to be maintained in every village in every republic—even in villages located on huge collective farms. Itself chosen for two years, the soviet elects from among its members an executive committee consisting of a chairman, vice-chairman, and secre-

[1] For example, A. L. Strong, in her *The New Soviet Constitution*, bearing the tell-tale subtitle *A Study in Socialist Democracy*. On the other hand, persons who regard the new system as merely clever camouflage designed to win the sympathy of Western democracies for the Soviet Union in its inevitable conflict with fascism probably go to the opposite extreme. See, for example, W. H. Chamberlin, "Russia's Gold Brick Constitution," *Amer. Mercury*, Oct., 1937.

[2] These observations were abundantly borne out in the first election held under the new system (December 12, 1937), when candidates were so well filtered that in not a single constituency was more than one finally presented to the voters. Soviet enthusiasts interpret this strange record as evidence of the unanimity of sentiment animating a classless society. But one may be pardoned for entertaining doubts. Judging by the experience cited, theoretically free election becomes actually a controlled plebiscite, on lines familiar in fascist countries.

tary; and to this agency are entrusted all executive and administrative functions (whether performed by it directly, as in smaller villages, or carried out under its guidance, as in larger ones), under a dual responsibility to the local soviet and to the executive organ of the district soviet above. Great emphasis is placed, indeed, upon the responsibility of the local soviet and its agents for the full execution within the village limits of all laws and instructions coming down from above, and especially for (1) liquidating the *kulak* element, (2) perfecting the collectivization of farming and other enterprises, (3) promoting the greatest possible increase of productiveness of the land, (4) directing the organization and administration of schools, hospitals, and other cultural and philanthropic establishments, (5) framing and executing budgets; and a wide variety of other activities. Most village soviets are small, but in the towns the number of members not infrequently runs to 1,000 or more; in municipalities of over 100,000, indeed, auxiliary soviets are organized in the several wards—in Moscow, 24 of them.[1] Although meeting often (at least once a month), urban soviets are commonly too large for effective transaction of more than certain kinds of business, and accordingly the subsidiary machinery includes not only a president and a long list of standing committees (on finance, education, public health, etc.), but a "presidium" of from 11 to 17 members, elected by the soviet from its own membership and charged with making many decisions and with carrying on the actual day-to-day town or city administration in smaller places and directing the municipal departments and staffs in larger ones—with the president, his deputy, and his secretary forming an inner "bureau" for representing the municipality in all of its official connections. With allowance made for differences that must necessarily exist as between rural and urban units, the powers and functions of town soviets parallel those of rural ones. The volume of work to be performed is great; and nominally much of it, both legislative and administrative, can be carried on autonomously. All testimony, however, goes to show that little can be undertaken except on the basis of laws and orders originating higher up.

GOVERNMENT ON HIGHER LEVELS

As indicated above, the general pattern of governmental organization found in the towns and villages is carried up through all levels until the Union itself is reached; and even at that point fundamental resemblance by no means fails. In districts, provinces, and republics,

[1] Alternates, too, are elected to town soviets, not exceeding one-third of the number of regular delegates

soviets represent progressively larger populations; and since 1936 their members have been elected directly rather than indirectly. But their general status and functions are substantially the same, allowing only for the differences of level on which they operate.[1] In all cases, there is a large executive committee, chosen by the soviet and exercising most of the soviet's actual authority; a smaller presidium, chosen by this committee for the more immediate and continuous direction of activities; and a staff of trained officials for the actual administration of financial, educational, military, transportation, health, and other affairs. As the scale is ascended, the scope of control over soviets and officials beneath is observed expanding, culminating, in earlier days, in the dominating authority of the republic soviet or congress, but in later times in that of the U.S.S.R. itself. Here again, in form the arrangements contemplate a good deal of autonomy, widening steadily as one progresses from the local community to the republic. Many circumstances, however—including the infrequent and brief sessions of the soviets, or congresses, as well as their unwieldy membership—combine to frustrate all genuine decentralization and actually to accentuate one of the most conspicuous features of the system viewed as a whole, *i.e.*, the concentration of power in the hands of a few leaders at the top, especially such as hold high places in the party. The professed ideal is that of "democratic centralism," or, as Lenin put it, "centralized direction and decentralized activity." Notwithstanding a certain groping, however, in the direction of democracy, as evidenced by the broadening of the suffrage and the substitution of direct for indirect elections, the psychosis of counter-revolution and foreign intervention under which the régime still lives leaves little more actual latitude for "activity" than for "direction" not controlled rigidly from above.[2]

Without further attention to the units ranging from town and village to the constituent republic, something may now be said about the government of the Soviet Union as a whole—although,

[1] In the constituent republics, the soviet, formerly known as the All-Republic Congress, but known since 1936 as the Supreme Council, is elected for four years, and is endowed with the power (among others) of adopting and amending the republic constitution, in conformity, of course, with the constitution of the U S S R.

[2] The most recent and best account of local and regional government in a republic (and by the same token in the U S S R) is that by B. W. Maxwell in W. Anderson, *op. cit*, 383–430, with important documents appended. A good deal of information can be gleaned also from B. W Maxwell, *The Soviet State* (London, 1935), S N. Harper, *The Government of the Soviet Union*, cited above, S. and B. Webb, *Soviet Communism, A New Civilization?* (new ed, New York, 1936); and A. L. Strong, *The New Soviet Constitution*, cited above.

as has been explained, it represents simply one additional level in the series and, structurally, bears general resemblance to the others.

THE GOVERNMENTAL ORGANS OF THE U.S.S.R.:

1. THE SUPREME COUNCIL

Taking the constitution at its word, the highest organ of "state power" in the Union is the Supreme Soviet (commonly, though perhaps less accurately, called the Supreme Council), replacing since 1936 the All-Union Congress—perhaps more strictly the Central Executive Committee, which came nearer to being the actual legislature under the previous régime.[1] The old Congress was a cumbersome one-house assembly, of some 1,500 members, chosen by the congresses of the several republics, and meeting for a brief session every two years. By all testimony, it was not a very efficient body; too nearly resembling a mass meeting, its proceedings consisted mainly of hearing reports of officers, perfunctorily passing resolutions, and listening to eulogistic Communist speeches calculated to whet the zeal of the delegates. Far from being a true legislature, it was hardly more than a spectacle staged with much fanfare for the benefit of native and foreign observers—in other words, only an instrument of education and propaganda. The Central Executive Committee to which reference has been made was a large bifurcated body, one branch consisting of persons chosen by the Congress from its own membership and the other composed of appointees of the autonomous republics and regions. Charged with conducting Union affairs between sessions of the Congress, it actually wielded almost independent authority, not only in legislation but in executive and administrative matters as well.

With the old relatively useless All-Union Congress entirely discarded, the Supreme Council under the constitution of 1936 perpetuates the bicameral principle on which the former Central Executive Committee was organized, being divided into two coordinate chambers, each of some 570 members, and known, respectively, as the Council of the Union and the Council of Nationalities. Members of the two bodies are alike elected by direct popular vote, but on a different basis—those of the Council of the Union in uniform constituencies of 300,000 population, those of the Council of Nationalities under arrangements whereby constituent republics are entitled to 25 each, autonomous republics 11 each, autonomous regions five each, and even "national districts" (often with only a few thousand inhabitants) one each—the object being to prevent smaller national-

[1] Art. 30.

ities from being completely swamped by larger ones. Elected for four years, the Supreme Council now holds two regular sessions annually,[1] with special sessions possible; and orientation in the direction of Western parliamentary forms is further evidenced by provision not only for conference committees in cases of deadlock, but for dissolution (of both chambers) and new elections when the bodies cannot be brought into agreement. The equality of the two chambers is literal and absolute; any measure, financial or otherwise, may be initiated in either, and no law can be enacted without a majority—no constitutional amendment adopted without a two-thirds—vote in each.

THE PRESIDIUM

Having spoken of the supreme legislative authority, we might be expected to bring into view next the highest executive and administrative organ, *i.e*, the Council of People's Commissars. Standing between these two agencies, however—although nearer to the Supreme Council—is another authority which requires mention, *i.e.*, the Presidium. Composed of 37 persons chosen by the two branches of the Supreme Council from their own lists of members,[1] this Presidium is in form a standing committee charged with exercising various functions of the larger body during intervals between its sessions. It cannot, however, make laws, and in point of fact, although legislative rather than executive in basis, most of the specific powers which the constitution confers upon it are such as we are accustomed to think of as executive, including appointing people's commissars, diplomatic representatives, and officers of the armed forces, ratifying treaties, and pardoning offenders, besides convoking and (in cases of legislative deadlock) dissolving the Supreme Council. Of somewhat mixed character are the powers of declaring defensive war, ordering mobilization, and interpreting "the laws in force in the U.S.S.R.", of rescinding decisions and orders of the commissars of Union and republics alike when held to be not in accordance with supreme law, and of conducting popular referenda, either on the Presidium's own initiative or on demand of one of the constituent republics.[2] As very well illustrated by the functions of the Presidium, Soviet government is not organized with much regard for the principle of separation of powers.

[1] The first in its history took place in January, 1938.

[2] A few serve *ex officio* Stalin is a member not only of the Supreme Council (by election) but of the Presidium

[3] Art 49 of the constitution.

THE COUNCIL OF PEOPLE'S COMMISSARS

At last we reach the agency designated by the constitution as the "supreme executive and administrative organ of state power," *i.e.*, the *Sovnárkom*, or Council of People's Commissars.[1] Numbering well beyond a score, the members of this group are selected, at least nominally, by the Supreme Council; and in form they constitute a ministry, under a chairman. Powers expressly conferred upon the group as a whole include (1) unifying and directing the work of all the commissariats, or executive departments, (2) taking measures for realizing the national economic plan and carrying out the budget, (3) ensuring public order, defending the interests of the state, and safeguarding the rights of citizens, and (4) exercising general supervision over foreign relations; and, individually, the commissars direct the activities of the several branches of state administration, very much as ministers in other systems are accustomed to do. Some of the commissariats, or departments, function in fields in which the Union has exclusive jurisdiction; and these—Defense, Foreign Affairs, Foreign Trade, Railways, Communications, Water Transport, Heavy Industry, and Defense Industry—are "All-Union" people's commissariats, with sole control throughout the length and breadth of the U.S.S.R., precisely as if in a unitary state. Other commissariats operate in domains in which the 11 republics share authority and have appropriate commissariats of their own; and these—Food Industry, Light Industry, Timber Industry, Agriculture, State Grain and Livestock Farms, Finance, Domestic Trade, Home Affairs, Justice, and Health—are "Union-republic" commissariats, with a large part of their work consisting in coördinating administration as carried on principally by the corresponding commissariats in the various republics. Even the foregoing lengthy list of commissariats—significantly abundant in names evidencing the all-pervading state control over economic life—does not present the entire picture; for, represented also in the Council of People's Commissars are five major auxiliary establishments—a State Planning Commission (*Gosplan*), dating from 1922 and heading up the entire program of planned economic and social reconstruction; a Soviet Control Commission, which is supposed to check up on the execution of all decrees and orders; and Committees on Higher Education, Arts, and Purchasing Agricultural Products.

[1] For the decree of November 12, 1923, originally creating this institution, see W. R. Batsell, *Soviet Rule in Russia* 599–605.

HAS THE U.S.S.R A "CABINET SYSTEM"?

Allowing for certain peculiarities, the system that has been outlined looks a good deal like cabinet government as found in Great Britain, France, and other Western countries. Responsibility is carried upward, in each republic, from primary units through the various levels until it culminates in organs which themselves are responsible to those of the U.S.S.R. At Moscow, the commissars, or chief department administrators, are gathered in a ministerial council, which is expressly declared responsible to the elective Supreme Council, directly when that body is in session, indirectly through the Presidium at other times.[1] Furthermore, the Supreme Council is endowed with full power to appoint investigating, as well as auditing, commissions.[2] The constitution of France, let us say, goes no further. Anyone, however, who has read the preceding chapter dealing with the Communist party and its connections with the government will shrink from being too strongly impressed with mere constitutional provisions. He will recall that, while commissars are in form elected by the Supreme Council, they are in reality designated by the *Politbureau* of the party, itself hand-picked by the party secretary-general, who is none other than Stalin, and, inquiring further, he will not be surprised to find that such responsibility as they bear lies in the direction, not of any elective parliament, but in that of the party autocracy. It is only fair to remember that a national constitution introducing important innovations of a democratic nature has been in operation but a very short time; and one should not be too sure about how it will eventually work. For a good while to come, however, democracy, responsibility, parliamentarism, bid fair to be only gestures or shadows, with dictatorship the sole reality.[3]

[1] Art 65 of the constitution.

[2] Art 51, *ibid.*

[3] Nearly all available descriptions of government in the USSR antedate the promulgation of the 1936 constitution, and are therefore only moderately useful on the present system Exceptions, however, include S N. Harper, *The Government of the Soviet Union* (New York, 1938), an excellent work, and R L Buell (ed), *New Governments in Europe* (rev ed , New York, 1937), in which pp 322–403 are devoted to the subject Aside from these volumes, the most convenient general treatise in English is B W. Maxwell, *The Soviet State; A Study of Bolshevik Rule* (Topeka, 1933). But other good books also dating back a few years include H. N. Brailsford, *How the Soviets Work* (New York, 1927), and W. R. Batsell, *Soviet Rule in Russia* (New York, 1929). Compact and informing, too, is V. M Dean, "The Political Structure of the Soviet State The Government of the Union," *Foreign Policy Reports*, VIII, No 2 (May 30, 1932). A pamphlet, *Stalin on the New Soviet Constitution* (New York, 1936), is, of course, authoritative although

SOVIET LAW

Reaching as it did to the very foundations of the social order, the revolution of 1917 left the old imperial law codes, as relics of a capitalistic régime, completely repudiated and substituted for them hastily devised "socialist" legislation, which, as time went on, grew in volume until the staggering proportions of the present day were arrived at. As a matter of practical policy, it became necessary to permit certain of the old capitalistic legal concepts to be revived. Nevertheless, fundamentally, law —both in the U.S.S.R. as a whole and in the constituent republics— is what Lenin affirmed it to be, *i.e.*, "the actions of the masses," or, at all events, the actions of revolutionary authorities purporting to speak for the masses. From time to time, statutes, decrees, and administrative rulings on a given subject, *e.g.*, labor, family relations, civil procedure, have been gathered into codes, which, however, as the stream of new legislation rolls on, quickly become partially obsolete and otherwise lose claim to completeness; so that both the codes themselves and text-books undertaking to elucidate and popularize them stand perpetually in need of revision. Paralleling preparations for the new national constitution of 1936 were plans for an all-round reworking of the codes, both substantive and procedural; although political exigencies, combined with lingering doubts as to the proper place of law in a socialist state, have delayed execution of the task.

THE JUDICIARY

If law in the early stages of the régime was revolutionary and unstabilized, no less so was the administration of justice. Local "people's courts" operated under highly informal procedures designed to admit of "mass participation," with trials often becoming virtually indistinguishable from political meetings bent on propaganda and persecution; still worse, a relentless secret police (the *Cheka*), functioning through special tribunals scattered through the land, and concerned with detecting and punishing opposition to the régime, made arrests, conducted so-called trials, and summarily executed the condemned, under cloak of complete secrecy and with no safeguards whatsoever for the accused. Gradually, these harsher procedures were ameliorated and courts of more regular character instituted; [1] and while justice is

brief. A. R. Williams, *The Soviets* (New York, 1937), has to do, in sympathetic tone, chiefly with Soviet principles, policies, techniques, and economic and social programs and measures, but presents also some information on government

[1] The *Cheka*, it must be conceded, was modelled on a similar establishment existing in tsarist days for the detection and repression of revolutionary activities. Abolished in 1922, its place was taken by a "Unified Political Administration of the Union" (*O.G.P.U.*), which functioned until 1934, when responsibility for sup-

still administered under the influence of a revolutionary psychology, and on lines which under free governments would be regarded as excessively rigorous, conditions are at all events better than in earlier days. To be sure, notwithstanding express affirmation of the 1936 constitution that "judges are independent and subject only to the law,"[1] the judiciary has in practice no such independence as is enjoyed in Western countries. Not only is it merely a branch of the administrative system (even in France, as we have seen, this is true), but its prime function is regarded as that of protecting the régime against its enemies; from which it follows that, although commonly disinterested enough in dealing with disputes between individuals, and with other types of cases not having political implications, it cannot be trusted to preserve the same impartiality when the question is one of upholding the citizen's claims or interests against the government.

THE SYSTEM OF COURTS

As has appeared, justice is one of the governmental functions shared by the Soviet Union with the federated areas, and in that sense the administration of it is decentralized—although, as one would suspect, all control over it deemed essential for purposes of the régime as a whole is in practice jealously retained in Moscow. Except for a U.S.S.R. Supreme Court,[2] all courts are organs of the constituent republics or their subdivisions; and in each such area there are, by the terms of the U.S.S.R. constitution,[3] three grades of courts, as follows (from the bottom upwards): (1) people's courts, or courts of first instance, each consisting of a popularly elected judge and two lay, or "citizen," associates, the latter also chosen (for three years, as is the judge) by the voters, but from a panel of names presented by the local soviets;[4] (2) district courts, with judges elected for five years by the district soviets, and having both original and appellate jurisdiction; and (3) a supreme court, elected by the supreme council, or soviet, of the republic, also for five years, and likewise endowed with original as well as appellate jurisdiction. Elected, in its turn, by the Supreme Council of the Union, and for

pressing counter-revolutionary and other subversive activities was transferred to the Union commissariat of home (or interior) affairs

[1] Art 112

[2] Together with such special courts as the Supreme Council may provide for, *e g*, military courts and courts (or boards) of arbitration, extensive use of which is made in connection with disputes between state economic enterprises

[3] Art 102.

[4] The associates have equal voice with the judge in deciding cases, and the purpose of including them is to keep the processes of justice in close touch with the workers.

the usual five years, the U.S.S.R. Supreme Court (its 30 or more judges sitting in criminal, civil, and military sections) handles appeals from the supreme courts of the republics in cases turning on alleged violations of U.S.S.R. laws; decides controversies between republics; hears charges against U.S.S.R. officials; renders "advisory opinions" on the constitutionality of statutes and decrees, although without power to declare any U.S.S.R. law unconstitutional; and supervises "the judicial activity of all judicial organs of the U.S.S.R. and Union republics." No use is made of juries in any of the tribunals named, but the device of "people's associate judges" is employed not only in the courts of first instance, but in all others as well. Occupied normally with their regular pursuits, such associate judges are commonly required to render service for only a week or 10 days at a time.

PROSECUTORS

The all-pervading supervisory authority of the U.S.S.R. Supreme Court imparts to the judicial system as a whole a substantial measure of centralization. Tending to the same end is an All-Union commissariat of justice instituted in 1936, and, more especially, a scheme of "procurors," or prosecutors, existing before 1936 but more closely articulated and centralized at that time. The key figure in the hierarchy is the Prosecutor of the U.S.S.R., chosen for the long term of seven years by the Supreme Council, and charged with "highest supervision of the exact observance of all laws by all people's commissariats and institutions under them, as well as by individual persons holding official posts, and also by citizens of the U.S.S.R."[1] His business it is to investigate all cases of alleged or suspected graft, sabotage, misuse of public properties, and a long list of crimes deemed particularly serious in a socialist order, and to prosecute the offenders before the appropriate courts. Each constituent republic, autonomous republic, province, and autonomous province has also a prosecutor, whom the Prosecutor of the U.S.S.R. appoints directly for five years; each local district and urban area has a similar official appointed by the republic prosecutor, but only with approval of the Prosecutor at the top; and all organs of prosecution, on whatever level, perform their functions under responsibility only to this "attorney-general," and in no wise to the local authorities of the various jurisdictions. Accused persons do not employ ordinary practicing lawyers for their defense; indeed, such are unknown. Instead, there are "advocates," organized in "collectives" under court supervision, their members bound to render quotas of "social service" by giving free legal

[1] Art. 113 of the constitution.

advice and aid; although, this duty done, they may seek compensation in accordance with a fixed scale.[1]

RIGHTS AND DUTIES OF CITIZENS

Those who started the Soviet state on its hazardous course naturally considered that, at least until all danger of counter-revolution should have been removed, personal rights and liberties would have to be kept strictly in abeyance; and in the earlier constitutions one encounters nothing remotely resembling a bill of rights. Sponsors and defenders of the new régime early recognized that they were being put more sharply on the defensive in respect to this matter than any other, and, stoutly contending that communism, far from stifling individual effort and creative activity, in the long run really affords them wider scope by guaranteeing freedom from exploitation, took advantage of somewhat more stabilized conditions to write into the new fundamental law of 1936 one of the most extraordinary bills of rights known to history.[2] Here again there is still too much evidence of harsh and arbitrary actions on the part of public officials, too much censorship and repression, too many secret trials and vindictive condemnations, to permit one to accept the constitution's fine-sounding phrases at face value. Indeed, the instrument itself frankly admits that the freedom of speech, press, and assembly for which it provides is to be "in accordance with the interests of the toilers and for the purpose of strengthening the socialist system" [3]—which means that it in no wise extends to any utterance, publication, or meeting capable of being construed as unfavorable to the régime.

Nevertheless, in later years there has been a certain genuine tendency toward emancipation of the individual from the prison-like collectives and *cadres* in which he was formerly encased,[4] and in any event, a few of the new constitution's professed guarantees are worthy of being noted. Basic to all else is the equality granted women with men in all fields, and pledged likewise to all citizens of the U.S.S.R. regardless of nationality and race. Specific rights of a personal nature include those of (1) employment, with suitable compensation; (2) "rest," or leisure made possible by shortened working hours; (3) old age, sickness, and disability insurance, (4) free elementary and higher education, (5) freedom of conscience and worship, and of "anti-religious" (although significantly not of

[1] On the subject of law and justice, see B. W. Maxwell, *The Soviet State*, Chap. ix, H. J. Laski, *Law and Justice in Soviet Russia* (pamphlet, London, 1935), and M. S. Calcott, *Russian Justice* (New York, 1935). Cf. P. E. Mosely, "Recent Soviet Trials and Policies," *Yale Rev.*, Summer, 1938.

[2] Arts. 118–133. [3] Art. 125.

[4] See S. N. Harper, *The Government of the Soviet Union*, 154–158.

"religious") propaganda;[1] (6) freedom of speech, press, and assembly; (7) liberty to form trade unions, cooperative associations, youth organizations, and other societies, (8) inviolability of person, residence, and correspondence, including freedom from arrest except with the sanction of a prosecutor or on decision of a court. As for property, that which has been socialized (*e.g.*, land, mines, factories, railways, banks, etc.) must be "safeguarded and consolidated" by every citizen; but that which is owned privately (*e.g.*, dwellings, motor cars, tools, etc.), even though permissibly reaching considerable values, is to be respected and protected—so long (and this is the norm by which all rights of private property are to be judged) as it is held for the owner's exclusive personal use, and not as means for exploiting the labor of others.

Rights, however, carry with them corresponding duties; and obligations are laid upon the citizen (1) to observe the constitution and "carry out" the laws; (2) to maintain labor discipline, (3) to "fulfill his social duties"; (4) to "respect the rules of the socialist community", (5) to safeguard socialized property; (6) to work, "according to the principle: 'He who does not work shall not eat' "; and (7) to serve, under the universal military service law, in the Red Army. All this for ordinary citizens; for party members—"citizens with special responsibility"—there is, of course, a great deal besides.[2]

[1] The support freely given by the Greek Orthodox Church to the reactionary excesses of the tsarist régime was such that any revolutionary government could have been depended upon, merely as a matter of self-preservation, to confiscate that organization's wealth and uproot its power. Moving at first with well-justified prudence, the Bolsheviks were content to go no further in the constitution of 1918 than to provide for the disestablishment of the church, secularization of the school system, and guarantees of freedom for "religious and anti-religious propaganda." As power grew, however, church properties and establishments were confiscated, while the officially supported propaganda agencies turned their efforts to combating all influences of organized religion, especially among the younger generation. As already mentioned, atheism was from the beginning one of the tests for membership in the Communist party, and in 1929 a decree of the Central Executive Committee, while recognizing and regulating religious associations, sought to further atheistic opinion by (in effect) deleting from the constitution all phrases giving religion and atheism an equality of status. The result was to make atheism a state dogma, and in later days, with atheists alone enjoying the right to teach their beliefs (as pointed out, no right of *religious* propaganda exists), Communist leaders have been confidently expectant that after the present generation shall have passed, the Russian soul will be found to have been molded completely into their own materialistic cast. So confident are they of this that the more militant phases of the war on religion have been abandoned, and numerous Greek Orthodox and other churches are permitted to remain open and hold services, even in Moscow. See B. W. Maxwell, *The Soviet State*, Chap. VII, W. H. Chamberlin, *Soviet Russia*, Chap. XIII, J. Hecker, *Religion under the Soviets* (New York, 1927).

[2] See the preceding chapter. A roseate view of "the new rights of man" in the U.S.S.R. is presented in A. L. Strong, *op. cit.*, Chap. V, and a skeptical view in W. H.

SOCIALISM TODAY, COMMUNISM TOMORROW

The party calls itself "Communist," and the goal toward which the entire existing régime is pointed is communism. Why, then, is the Union described in the opening article of the 1936 constitution as a *socialist* state—a Union of Soviet *Socialist* Republics? The answer is, because the transformation has not yet advanced to the point of ushering in what is conceived to be a genuine communistic order. Under communism, we are told, there will be no state. But as yet, there is, and must be, a state, "all-powerful, regulative, coercive." Under communism, no inequalities of birth, income, possessions, or even education, will exist. As yet, such inequalities do exist, despite the avowed intention eventually to overcome them. Under communism, the principle will be (as Marx would have it), "from each according to his ability, to each according to his needs." But as yet, progress has not got beyond, "from each according to his ability, to each according to his work" (as seen in inequality of earnings derived from work of differing quantity and quality). As Stalin himself explains, the present Soviet order is only socialism, "the first and lowest phase of communism." The constitution of 1936, indeed, is the earliest to proclaim the U.S.S.R. even a *socialist* state; that of 1918 merely declared it the object of the new régime to "secure the establishment of socialism," and that of 1924 talked likewise only in terms of aspiration.

THE NATURE AND EXTENT OF PRESENT-DAY SOCIALISM

Not even socialism has been attained completely. To be sure, the new constitution ordains that the "economic foundation" of the U.S.S.R. shall be "the socialist system of economy and social ownership of the implements and means of production, firmly established as a result of the liquidation of the capitalist system of economy, the abolition of the private ownership of the implements and means of production, and the abolition of the exploitation of man by man." [1] But, as we have seen, and as the constitution expressly recognizes, alongside this socialist system of economy there still exists, quite lawfully, "small private economy of individual peasants and handicraftsmen, based on individual labor and excluding the exploitation of the labor of others." [2] Some day, presumably, this too will disappear; and even now there is presumed

Chamberlin, "Russia's Gold Brick Constitution," *Amer Mercury*, Oct, 1937. Cf. R Baldwin, *Liberty under the Soviets* (New York, 1929), K. Martin, "The Russian Press," *Polit. Quar*, Jan.–Mar, 1933.

[1] Art. 4

[2] Art 9 "Just as in other countries state- and municipally-owned schools, post offices, and railways are islands of socialism in the sea of capitalism, so in the Soviet Union still remain these tiny islands of capitalism" A R Williams, *The Soviets*, 40

to be not enough of it to make "socialism" the misnomer that it would have been in the earlier stages of collectivization. The dominant socialist economy presents itself in two great phases: (1) ownership and operation by the state of land, waters, forests, mills, factories, mines, oil-fields, railways, water and air transport, banks, means of communication, state farms, and even housing in urban centers, and (2) cooperative and collective-farm ownership and use of buildings, machinery, live-stock, and other equipment and products utilized by the collectives in carrying on their socialized activities.[1] The great bulk of the people are employed, therefore, as workers for the state or as co-partners in cooperative or other collective enterprises, mainly agricultural.

The measure of socialism now prevailing has not been reached without plenty of set-backs and disappointments. The complete nationalization of land and industry originally decreed brought a train of disasters which in 1921 drove the government to institute a new economic policy (the famous *N.E.P.*) under which more leeway was allowed for private initiative and management. But this, while yielding better results economically, came to be regarded as imposing too great restraint upon socialization, and with a view to solving the problems involved, an ambitious "five-year plan" was launched in 1928, aimed at making the country economically self-sufficient while still permitting full steam ahead with the collectivist program. As compared with a state in which capitalism prevails, a socialist state can plan economic life freely, and for at least a time, effectively, and the first Soviet five-year plan yielded results so satisfactory, especially in the heavy industries, that a second one—developed more broadly to include not only agriculture and industry, but also finance, transportation, and education—was put into operation in 1933. It is largely the development attained under this second plan—bringing the proportion, for example, of former private holdings of land now collectivized (in state farms or collective farms) to more than 88 per cent—that lies behind the confident proclamation in the 1936 constitution of the socialist state as a reality.[2]

[1] Arts. 5-8 of the constitution

[2] A third five-year plan was officially launched in 1938. On the economic aspects of the Soviet régime, there is naturally an extensive literature. A good short account is B W Maxwell, *The Soviet State*, Chaps xvi-xvii. More extended treatment will be found in C. B. Hoover, *The Economic Life of Soviet Russia* (New York, 1930), P. Haensel, *The Economic Policy of Soviet Russia* (London, 1930), E Burns, *Russia's Productive System* (New York, 1931), A. Hirsch, *Industrialized Russia* (New York, 1934), and, on very lucid, although perhaps too optimistic, lines, A R. Williams, *The Soviets* (New York, 1937). On the five-year plans, one may cite W. H. Chamberlin, *The Soviet Planned Economic Order* (New York, 1931), M.

AN UNCERTAIN OUTLOOK

What of the future? That is a question which no one outside of the U.S.S.R. can answer—and very likely no one inside. For an outsider, indeed, it is almost equally impossible to answer the query, What of the present? Not that there is any lack of statistical and other data, poured forth by organs speaking for the party or the state, or of books and articles written by people who have visited the country and come away with what they took to be the facts about its economic condition, its processes of government, its social institutions, and the temper of its people. But much of the pseudo-information broadcast from Moscow is palpably propagandist, many of the accounts given us by foreign observers are sentimental, credulous, based on what was seen or heard in the course of brief visits during which the visitors were permitted to see and hear only the "right things"; in a land of such huge proportions, what is working well in one section may be doing very badly in others; in any event, what was true yesterday may not be true today, and even the score and more of years since the régime had its origin is far too brief a period to afford any clear indication of what is to be expected tomorrow.

On one point, however, there can be no difference of opinion: the task which the Communists have set for themselves is the most stupendous ever undertaken by a group of revolutionists—the more imposing, considering that from the beginning their eyes were on the ultimate goal, and that they therefore knew the distance to be travelled. Only a faith bordering on mysticism could contemplate with assurance the enterprise of creating out of the vast conglomeration of peoples (even in European Russia alone), largely illiterate and otherwise backward, an educated citizenry in which social welfare should replace individual gain as a motivation for work and sacrifice. And only a faith bordering on fanaticism could sustain the attempt to transform a non-industrial, relatively undeveloped, country into one in which, with the aid of tireless economic planning, the achievements and potentialities of a technological age should be harnessed to the promotion of the highest public good. Much—although it is impossible to say precisely *how much*—has been accomplished that may contribute to permanent advance in these major directions. But in any event, whether success or failure,

Farbman, *Piatiletka: Russia's Five-Year Plan* (New York, 1931), J Stalin, *From the First to the Second Five-Year Plan* (New York, 1934), and *The State of the Soviet Union* (New York, 1934), and State Planning Commission of the U.S.S.R., *The Second Five-Year Plan* (New York, 1937) Cf V M Dean, "Industry and Agriculture in the U S S R," *Foreign Policy Reports*, XIV, No. 6 (June 1, 1938), and "Labor and Management in the U S S R," *ibid*, XIV, No. 7 (June 15, 1938).

full or partial, shall crown the efforts of the Soviet innovators, the whole proceeding will go down in history as an unprecedentedly ambitious attempt to furnish a workable solution to the perennial problem of adjusting the relations of man to man and of man to the world in which he lives.[1]

[1] Lord Passfield (Sidney Webb), "Soviet Communism, Its Present Position and Prospects," *Internat. Affairs*, May–June, 1936, N. de Basily, *Russia under Soviet Rule; Twenty Years of Bolshevik Rule* (London, 1938).

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